

No. 11632

United States
Circuit Court of Appeals
For the Ninth Circuit.

W. COBURN COOK, as Trustee,
Appellant,
vs.

BAXTER CREEK IRRIGATION DISTRICT
and the Landowners, H. J. CLARK, LURLEY
CLARK, LEONORA M. BAILEY, LYAL
ZEITLER, GEORGE McROREY, RACHEL
McROREY, MR. and MRS. E. A. BLICKEN-
STAFF and JAMES N. FARRELL and AMY
L. FARRELL,
Appellees.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Northern District of California,
Northern Division

FILED

JUL 1 1947

PAUL P. O'BRIEN

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

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Attorney for Appellant.

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San Francisco, Calif.,
Attorney for Appellees.

In the United States District Court for the
Northern District of California
Northern Division

No. 10750

In the Matter of the
BAXTER CREEK IRRIGATION DISTRICT,
Bankrupt.

**PETITION FOR CONFIRMATION
OF COMPOSITION**

To the Honorable Martin I. Welsh, Judge of the
Above Entitled Court:

Comes now the Baxter Creek Irrigation District, an irrigation district, organized under the laws of California, relating to the organization of Irrigation Districts and petitions the Court for a confirmation of the plan of composition, of its bonded, coupon, warrant and judgment debt, attached hereto, under the provisions of Sections 81 to 84, inclusive, of the Bankruptcy Act of the United States and in support of this petition your petitioner alleges:

I.

That the Baxter Creek Irrigation District was organized in the year 1917 and has existed continuously since that date as an Irrigation District located wholly within Lassen County, California.

II.

That on or about the 1st day of July, 1921, the said District caused to be issued and sold, in the

manner provided by law, its coupon bonds in the total sum of \$511,000.00 and bearing interest at 6% per annum, which interest is evidence [1*] by semi-annual interest coupons attached to each of said bonds, and such bonds being in denomination of \$1,000.00 and payable to bearer, and numbered consecutively from 1 to 511 and maturing serially from 1926 to 1943.

III.

That none of the principal of said bonds has been paid and interest coupons dated July 1, 1925, and subsequent are past due and unpaid on all of the above mentioned bonds except that a few of said interest coupons have been paid or redeemed.

IV.

That since the organization of said District it has issued certain warrants; that some of said warrants have not been paid; that some of said warrants have been registered; that there are now outstanding and unpaid known warrants in the sum of \$53,207.66.

V.

That certain judgments have been obtained against said District on some of the aforementioned bonds, coupons, and warrants and upon some of the judgments so obtained on said bonds, coupons and warrants; that said judgments have not been paid and are more particularly set forth in the plan of composition and schedule attached to this petition.

* Page numbering appearing at foot of page of original certified Transcript of Record.

VI.

That although said District desires to compromise and liquidate its indebtedness, nothing in this petition and/or plan and schedules attached hereto shall be considered or operate as a waiver of any and all defenses, including the statute of limitations of said District to the aforementioned indebtedness in case the plan of composition be not approved or carried out and/or to any action or suit against said District on said indebtedness or any part of it. [2]

VII.

That said bonds, coupons, warrants and judgments above mentioned are payable, according to the laws of California, from annual assessments levied upon and constituting liens upon the lands within the boundaries of the District; that the annual assessments required to meet the outstanding bonded, coupon, warrant and judgment indebtedness and the interest thereon are greater than the land-owners can pay and the total outstanding debt of the district is much greater than the value of the lands within the district; that as a result a major portion of the lands within the district have been sold to the district for failure to pay assessments and because of this situation the ability of the district to pay its obligations has been further reduced until it has become impossible, and the district is and has been for many years, insolvent and unable to meet its debts as they have matured, or will mature, making it imperative that the district effect

a composition of its bonded, coupon, warrant and judgment debt in order to continue in existence.

VIII.

That said District has been unable to produce and/or deliver any water to the lands within said district for over ten years and is still unable to do so; that the flumes, ditches, dams, tunnel and other physical properties of the district are in disrepair; that the Division of Water Resources of the State of California has cancelled all permits of the District to appropriate water from Eagle Lake, the only source of water of said district;

IX.

That a plan of composition of the bonded coupon, warrant and judgment indebtedness of the district has been agreed upon between the district and Mr. W. Coburn Cook, representing 79% of the outstanding bonded, coupon, warrant, and judgment debt and the interest [3] thereon and such plan is attached hereto and is by these presents presented to the Court.

X.

That by the execution of the attached plan of composition, the creditors of the District owning 80% in amount of the securities of the District have consented in writing to the plan of composition attached hereto.

XI.

That the indebtedness of the district affected by the plan of composition attached hereto is the outstanding bonded, coupon, warrant and judgment indebtedness described above and as a result there is only one class of creditor.

XII.

That a list of the known owners of the outstanding bonds of the district together with their addresses, where known, and the amounts of their claims is attached hereto, marked Exhibit 'A', and by reference made a part of this petition; that such list shows separately those creditors who have accepted the plan of composition attached hereto and also those creditors who have not accepted the plan of composition; that such list contains the title of Court and Civil Action numbers of certain judgments on some of said bonds and coupons.

XIII.

That a list of the purported outstanding warrants of the district showing the numbers, dates, amounts, and payees of said warrants, that are known, is attached hereto, marked Exhibit 'B', and by reference made a part of this petition; that such list shows the present known owners where different than the original payee of said warrants where possible; that such list shows what warrants that have been reduced to judgment; that such list shows the addresses of the present owners of said warrants

where known and the addresses of the original payees where known of those warrants which have not been [4] transferred to known transferees; that such list shows separately those creditors who have accepted the plan of composition attached hereto and also those creditors who have not accepted the plan of composition.

XIV.

That the owners of the lands within the boundaries of the district are affected by the plan of composition attached hereto and therefore there is attached hereto marked Exhibit 'C', and by reference made a part hereof, a list of the known record owners, together with their addresses where known, of all the lands within the boundaries of the district affected by the plan of composition attached hereto.

XV.

That it is the intention and purpose of said district in filing this petition to procure approval of the plan of composition hereto attached and to liquidate, discharge, pay and satisfy pursuant to the terms and provisions of said plan and order of this United States District Court all bonds, coupons, warrants ever issued by said district and judgments thereon against said district whether listed or not, and that no mistake contained in the petition and/or plan and schedule hereto attached as to the amounts of said bonds, coupons, warrants and judgments thereon shall invalidate this plan and that all holders of said debts shall have the opportunity to file and present their claims in this composition proceeding as provided for by the Court. [5]

Wherefore your Petitioner prays:

1. That the Court enter an order herein approving the petition and the filing thereof under the provisions of the Bankruptcy Act and directing that notice of these proceedings be given as required by the Bankruptcy Act and fixing a date of hearing upon this petition and
2. That upon the completion of the hearing an interlocutory decree be entered approving the plan and putting the same into effect and
3. That the Court make such other orders that are allowed by virtue of Sec. 403 or 11 U.S.C.A.
4. That upon the completion of the plan of composition, a final decree be entered, discharging petitioner from all debts and liabilities in accordance with such plan and
5. That the Court grant such further orders, decrees and relief in the premises as may be required to complete the jurisdiction of the Court and as may be deemed just and equitable.

BAXTER CREEK
IRRIGATION DISTRICT,
By H. J. CLARK,
President.

Attest:

FERN S. OHMAN,
Secretary.
/s/ FRANKLIN A. DILL,
Attorney for Petitioner. [6]

State of California,
County of Lassen—ss.

H. J. Clark, being first duly sworn, deposes and says:

That he is the president of the Board of Directors of the Baxter Creek Irrigation District; that he has read the above and foregoing petition and knows the contents thereof; that the same is true of his own knowledge, and that he is authorized by resolution of said Board of Directors to sign and verify the foregoing petition.

H. J. CLARK,

Subscribed and sworn to before me this 28th day of August, 1945.

FERN S. OHMAN,

Notary Public in and for the County of Lassen,
State of California.

[Endorsed]: Filed Sept. 17, 1945. [7]

EXHIBIT A

Division A-1

Baxter Creek Irrigation District
 List of Bonds Consenting to
 Plans of Composition

Owner and Address	Bond No. S	Amount	Date of Earliest Attached Coupon
Bondholders' Committee	1/5	5,000	Jan. 1926
c/o W. E. Buell	6	1,000	July 1925
227 Sherlock Building	7/18	12,000	Jan. 1926
Portland, Oregon	19/20, 22	3,000	July 1925
	23/31, 34/37	13,000	Jan. 1926
	39/40	2,000	July 1925
	41/57, 64/73	27,000	Jan. 1926
	74/78	5,000	July 1925
	83/84	2,000	July 1925
	86/1 15	30,000	Jan. 1926
	117/129	13,000	Jan. 1926
	135/138	4,000	Jan. 1927
	140	1,000	July 1925
	141/144	4,000	Jan. 1926
	145/149	5,000	July 1925
	150/154	5,000	Jan. 1926
	155/164	10,000	July 1925
	165/167	3,000	July 1925
	168/172	5,000	July 1925
	173/175	3,000	Jan. 1926
	177/196	20,000	Jan. 1926
	198/202	5,000	July 1925
	203/216	14,000	Jan. 1926
	222/237	16,000	Jan. 1926
	240/259	20,000	July 1925
	260/262	3,000	Jan. 1926
	263	1,000	Jan. 1927
	264/283	20,000	Jan. 1926

Owner and Address	Bond No. S	Amount	Date of Earliest Attached Coupon
Bondholders' Committee	286/290	5,000	July 1925
c/o W. E. Buell	299	1,000	Jan. 1926
227 Sherlock Building	300/304	5,000	July 1926
Portland, Oregon	305/319	15,000	Jan. 1926
	320/324	5,000	July 1925
	325/329	5,000	Jan. 1926
	330/332	3,000	July 1925
	333/337	5,000	Jan. 1926
	338/340	3,000	July 1925
	341	1,000	July 1926
	343/346	4,000	July 1926
	348/357	10,000	Jan. 1926
	358/359	2,000	July 1926
	361/363	2,000	Jan. 1926
	364/365	2,000	Jan. 1926
	366/367, 371	3,000	July 1925
	372	1,000	July 1926
	373	1,000	July 1925
	374/375, 377	3,000	Jan. 1926
	378/382	5,000	Jan. 1927
	383/397	15,000	Jan. 1926
	399	1,000	July 1925
	402/403	2,000	July 1925
	411/415	5,000	Jan. 1934
	416/419	4,000	Jan. 1926
	420/432	13,000	July 1925
	433/437	5,000	Jan. 1926
	438/442	5,000	July 1925
	445/449	5,000	Jan. 1925
	465/488	24,000	Jan. 1926
	490/491	2,000	Jan. 1926
	492/496	5,000	July 1927
	499/504	6,000	Jan. 1926
	507/511	5,000	Jan. 1934
	32/33	2,000	Jan. 1926
	38	1,000	Jan. 1925
	79/81, 85	4,000	Jan. 1925
	238/239	2,000	Jan. 1926
	297/298	2,000	July 1925
	450/454	5,000	Jan. 1926
Total.....	446 Bonds	\$446,000	

Judgments and/or Actions on Baxter Creek
Irrigation District Bonds and/or Coupons

The following actions and/or judgments have been filed and/or obtained on certain of the bonds and/or coupons attached thereto which heretofore have been listed as owned by the Bondholders Protective Committee and/or on the judgments so obtained on said bonds and/or coupons in the Superior Court of the State of California in and for the County of Lassen:

1.	Victor Etienne, Jr:	J. F. Katenkamp	vs. Baxter Creek I D.	No. 3935
2.	"	"	"	No. 4168
3.	"	"	"	No. 4026
4.	"	"	"	No. 4240
5.	Lewis Grigsby		"	No. 4265
6.	Victor Etienne, Jr:		"	No. 4550
7.	"	"	"	No. 4618
8.	"	"	"	No. 4620
9.	"	"	"	No. 4771
10.	"	R. F. Gill vs.	Baxter Creek I. D.	No. 5465
11.	"		"	No. 5466

EXHIBIT A

Division B

Baxter Creek I. D. Bondholders
Who Have Not Consented to Plan

Bond Nos.	Owner's Name & Address	Number of Bonds	Amount
21,	Pueblo Trading Co.....	23	\$23,000
218/221,	Gardnerville, Nevada		
284/285			
291/296,	Pueblo Trading Co. has a		
368/370,	judgment on Bonds No. 21,		
408/410,	218/221, 284/285, 291/296		
457/458,	in the case of Pueblo Trad-		
463/464	ing Co. vs. Baxter Creek I. D.,		
	Action No. 4195-L of the		
	U. S. District Court, Northern		
	District, Northern Division		
58/63, 116	Unknown	26	26,000
139, 176,			
197, 217,			
342, 347,			
360, 363,			
376, 401,			
443, 444,			
459, 462,			
497, 498			
505			
82	Albert R. Hermann.....	1	1,000
	611 Van Nuys Bldg.		
	Los Angeles, Calif.		
	and		
	210 West 7th Street		
	Los Angeles, Calif.		
	Albert R. Hermann procured a		
	judgment against Baxter Creek		
	I. D. on bond 82 and on coupons		
	8-19, inclusive, thereon in		
	action No. 4700 of the Superior		
	Court of the State of California		
	in and for the County of Lassen.		

Bond Nos.	Owner's Name & Address	Number of Bonds	Amount
130/134	Elmer Howard 247 Arguello Blvd. San Francisco, California Elmer Howard procured a judgment against Baxter Creek I. D. on bonds 130/134, inclusive, and on certain coupons thereon in action No. 4824 of the Superior Court of the State of California, in and for the County of Lassen. This judg- ment was sued on in Action No. 5626 in said Court.	5	5,000
489, 506	J. R. Mason 1920 Lake St. San Francisco, California	2	2,000
		—	—
		57	\$57,000

EXHIBIT C

Baxter Creek Irrigation District

If U. S. District Court rules that lands belonging to the following owners are not within the Baxter Creek Irrigation District they will not be considered part of Exhibit B of the Plan of Composition.

Plat No.	Name	Address
1	Bailey, Lenora	Milford, California
2	Bailey, Lenora	Milford, California
6	Clark, H. J. and Lurley	Standish, California
13	Farrell, Jas. M. and Amy	Susanville, California
17	McRorey, George F. and Rachel	Milford, California
21	May Florence Stiles Estate c/o Dermott Stiles	Burney Falls, California
23	Zeitler, Lyal and Cathleen	Janesville, California

[Title of District Court and Cause.]

CONSENT

I hereby consent to the plan of composition filed herein.

Dated November 1, 1945.

RUTH E. COOK.

[Endorsed]: Filed Nov. 7, 1945. [13]

[Title of District Court and Cause.]

CONSENT

I hereby consent to the plan of composition filed herein.

W. E. BUELL.

Dated at Portland, Oregon, September 8, 1945.

[Title of District Court and Cause.]

CONSENT

I hereby consent to the plan of composition filed herein.

Dated November 1, 1945.

PUEBLO TRADING
COMPANY,

a Nevada Corporation,
By W. COBURN COOK,
President.

[?] ANDERSON,
Secretary.

[Endorsed]: Filed Dec. 6, 1945. [15]

[Title of District Court and Cause.]

CONSENT

I hereby consent to the plan of composition filed herein.

Dated November 1, 1945.

E. B. DELBON.

[Endorsed]: Filed Nov. 7, 1945. [16]

[Title of District Court and Cause.]

CONSENT

I hereby consent to the plan of composition filed herein. I am the owner of Baxter Creek Irrigation District Bonds Nos. 407 and 505.

VICTOR ETIENNE, JR.

[Endorsed]: Filed Dec. 6, 1945. [17]

[Title of District Court and Cause.]

CONSENT

I hereby consent to the plan of composition filed herein.

ELMER HOWARD.

[Endorsed]: Filed Nov. 21, 1945. [18]

[Title of District Court and Cause.]

STATEMENT OF BONDHOLDERS PROTECTIVE COMMITTEE OF TULE AND BAXTER CREEK IRRIGATION DISTRICTS RELATIVE TO ITS EXPENSES INCIDENT TO THE PLAN OF COMPOSITION HEREIN INCURRED BY THE SAID COMMITTEE AND RELATIVE TO ITS REPRESENTATION OF BONDHOLDERS AND RELATIVE TO THE MATTERS REQUIRED TO BE STATED AND SHOWN BY TITLE 11, Sec. 403, (a) and (b), U.S.C.A., AND ITS PETITION FOR AN ORDER APPROVING THE SAME

To the Honorable Martin I. Welsh, U. S. District Judge:

Come now Victor Etienne, Jr., Leo G. MacLaughlin and William E. Buell, as and constituting the Bondholders Protective Committee of the Tule Irrigation District and Baxter Creek Irrigation District bondholders, herein called the committee, and respectfully show:

1. That these petitioners are constituted a bondholders protective committee under the terms of an agreement dated June 1, 1926, entered into between the said Bondholders Protective Committee and certain bondholders of said district, a copy of which agreement is hereunto annexed marked Exhibit "A" and by this reference made a part hereof, and it is further represented that said Bondholders

Protective Agreement was not executed in contemplation of this particular or any other bankruptcy [19] proceeding, and at a time prior to the enactment of the Municipal Bankruptcy Act, and that by the terms of said agreement, the said committee are the legal holders of the bonds and coupons held by them, of which however the individual certificate holders are the beneficiaries, and they further respectfully represent that the expenses and fees which have been incurred by said committee are and have been incurred pursuant to said agreement and are valid and binding upon the parties to said agreement and not subject to modification by this Honorable Court. Nevertheless, petitioners request the approval thereof by this court and fully disclose all matters pertaining to the operation of said Bondholders Protective Committee.

2. The committee further respectfully represents that a list of the creditors represented by said committee, showing the name and address of each such creditor is set forth and annexed to the petition herein of the said district for composition denoted Exhibit A, Division A-(3) attached to the petition for composition herein and that a statement of the amount, class and character of the securities held by said committee is fully set forth in Exhibit A, Division A (1) attached to said petition, and said exhibits are hereby referred to and made a part hereof by this reference.

That said committee pursuant to the authority given it by said agreement entered into a contract with Mr. W. Coburn Cook, an attorney at Turlock,

California, copy of which is hereunto annexed and marked "Exhibit B" and made a part hereof by this reference, which said agreement authorized the said W. Coburn Cook to negotiate and perfect a plan of composition of the debts of said irrigation districts and which agreement provided for certain fees and compensation to be paid to him in consideration of the matters set forth in said contract, and except as to the matters set forth herein under the heading of "Claims and [20] Expenses" the said bondholders protective agreement and the said contract with W. Coburn Cook disclose all compensation to be received by said W. Coburn Cook and said committee further respectfully represents that no fiscal agent, attorney or other person, firm or corporation promoting the composition on behalf of said committee has been or is to be compensated directly or indirectly by either of said irrigation districts, either by fee, commission or other similar payment, by transfer or exchange of bonds or other evidence of indebtedness whereby a profit could accrue, and that the only compensation to be allowed or paid to said W. Coburn Cook as respects the bonds held by this committee is that which is set forth in the annexed Exhibit "B" and under the heading "Claims and Expenses."

Claims and Expenses

3. Said committee further respectfully represents the following is a statement of claims and expenses and fees incurred, allowed, approved and to be paid by said committee direct out of the pro-

ceeds received in this composition proceeding. In this connection be it noted that the said Bondholders Protective Agreement was a composite or joint and several agreement with the bondholders of the Tule Irrigation District and Baxter Creek Irrigation District, and that the items of expense incurred were incurred by the committee as a committee for both groups of bondholders as a whole. That the fees agreed to be paid were agreed to be paid by the committee as a whole, that is as representative of creditors of both districts. All expenses, claims, fees, charges are to be prorated and to be paid and charged out of the funds available for the creditors of Tule Irrigation District and Baxter Creek Irrigation District in proportion to the principal face amount of the bonds held by the committee of each district, and in this respect it is shown that the principal face amount thereof held by this committee in the [21] Tule Irrigation District is the sum of \$714,000, and the principal amount held by it of bonds of the Baxter Creek Irrigation District is the sum of \$446,000, and the hereinafter described fees, charges, expenses are to be prorated between the two sets of creditors on the basis of 61.55% for Tule Irrigation District and 38.45% for Baxter Creek Irrigation District.

Statement of Expenses of Committee

1. Traveling expenses of Leo G. MacLaughlin, member of committee . . .	\$ 750.00
2. Advances and expenses incurred by Victor Etienne, Jr., member of committee	1,000.00

3. Traveling expenses of W. E. Buell,
member of committee.....\$ 977.78
4. Legal services of Orrick, Dahlquist,
Neff, Brown & Herrington and
George Herrington, of Financial
Center Building, San Francisco, in
consultations with committee and
committee members and actions
brought by the committee to pre-
vent the bar of the statute of limita-
tions running, defense of actions
against the committee, negotiations,
correspondence from the year 1926
to the present time..... 3,800.00
5. Legal services due and payable to
W. Coburn Cook, Berg Building,
Turlock, California, in special pro-
ceedings on behalf of and for the
benefit of the bondholders protec-
tive committee, including services in
a representative capacity in the case
of Pueblo Trading Co. v. Tule Irri-
gation District and Pueblo Trad-
ing Co. v. Baxter Creek Irrigation
District, proceedings in relation to
assessment of lands in the Tule Irri-
gation District and Baxter Creek
Irrigation District, and pertaining
to the expulsion of land and refer-
ence thereto 3,500.00

6. Anglo-California National Bank as depositary, San Francisco, California, being a compromise of its claim of \$8,470.05 in connection with the deposit, issuance of certificates, and custody of the bonds and other services pursuant to the deposit agreement for the period from 1926 to the present time, for the period ending December 31, 1943.....\$1,000.00
7. And in addition thereto a reasonable sum to be afterwards disclosed to the court and approved for service from December 31, 1943, to closing of the account, and including disbursements made and services in connection therewith, and additional depositary fees.

Wherefore, said Bondholders Protective Committee prays that this Honorable Court approve the foregoing, including allowance of fees and disbursements, as well as approval of the contract [22] between said W. Coburn Cook and the respective districts.

VICTOR ETIENNE, JR.,
LEO G. MacLAUGHLIN,
W. E. BUELL.

State of Oregon,
County of Multnomah—ss.

William E. Buell, being duly sworn, deposes and says:

That he is secretary of the Bondholders Protective Committee of the Tule and Baxter Creek Irrigation Districts; that as such secretary he makes this verification for and on behalf of the said Bondholders Protective Committee; that he has read the foregoing Statement and knows the contents thereof, and that the same is true of his own knowledge, except as to matters therein stated upon information or belief, and as to those matters he believes it to be true.

W. E. BUELL.

Subscribed and sworn to before me this 11th day of October, 1945.

[Seal] O. F. BOYLE,
Notary Public in and for the County of Multnomah, State of Oregon.

[Endorsed]: Filed Oct. 31, 1945. [23]

EXHIBIT "B"

Agreement

Dated: October 1, 1943
San Francisco, California

Whereas, the Tule Irrigation District heretofore issued \$806,000 principal amount of its 6% bonds, and Baxter Creek Irrigation District heretofore issued \$511,000 principal amount of its 6% bonds, and whereas said districts have each defaulted and been in default of payment of principal and interest since 1925 and there is now outstanding and

unpaid in principal amount of bonded indebtedness of said districts approximately \$1,317,000;

And Whereas, certain of the bondholders of said district entered into a Bondholders Protective Agreement on June 1, 1926, or thereabouts, with themselves and Victor Etienne, Jr., and others (called the Committee) and which agreement is hereby referred to, and the said bondholders entering into said agreement have deposited their bonds in the principal amount of \$714,000 Tule Irrigation District and \$446,000 Baxter Creek Irrigation District, with the Anglo California Trust Company in San Francisco, California, now The Anglo California National Bank of San Francisco, as depository and which said deposits and the records thereof of said bank are referred to and whereas the said Committee is now composed of Victor Etienne, Jr., Leo G. MacLaughlin, Raymond F. Gill, W. E. Buell, and R. J. McMullen;

Now, Therefore, under authority of a resolution passed unanimously by the said members of the Committee at [24] a regular meeting thereof held at San Francisco, California, October 1st, 1943, and by virtue of the authority vested in the said Committee and each of the members thereof, this agreement is executed by said Committee as representatives of the said depositing bondholders as Party of the First Part, and W. Coburn Cook, an attorney, of Turlock, California, Party of the Second Part, and witnesseth:

1. The Committee hereby expresses its determination to carry the plan of reorganization into

practical operation by taking any and all steps necessary to acquire all or any of the lands in said districts on behalf of the bondholders, to sell or dispose of the same or to compromise its claims against the same and distribute the net proceeds among the bondholders. For the purpose of carrying said plan into practical operation the Committee hereby determines that a cash settlement with the Districts or any landholder equivalent substantially to the net recovery which could be anticipated in the event the district actually took title and resold the property shall be the equivalent of such sale and disposition. For the purpose of carrying out said plan the Committee hereby employs W. Coburn Cook and said W. Coburn Cook, as attorney for the Committee, is hereby authorized and directed to commence, prosecute, defend, compromise or dismiss any and all actions as in his discretion may be necessary or to exercise and enforce any and all rights and remedies appertaining to the deposited securities and to compromise, adjust release and surrender any and all rights, claims and demands and security in respect thereto, and to collect, compromise, sell, transfer, exchange, trade or otherwise deal in properties or lands in the district or the proceeds thereof; to receive any moneys, properties or benefits in [25] exchange or sale, compromise or otherwise and to enter into composition with the respective boards of directors of each of said districts and to initiate and agree to the initiation of any composition proceeding under the National Bankruptcy Act of the purpose of carrying said

plan into practical operation. The said W. Coburn Cook is further authorized and empowered to manage, sell, deal in, lease or otherwise handle or dispose of all properties he may receive in carrying out said plan, to reduce the same to cash and to deposit the proceeds thereof as provided herein.

2. Said W. Coburn Cook, party of the second part, is hereby authorized, if in his discretion it may be necessary, to formulate any refunding program or other plan for the liquidation of said indebtedness and to present the same to said Committee for adoption in the event it shall be determined that it is impractical to carry out the plan above set forth.

3. The party of the second part agrees that he will pay all expenses of litigation and handling the transactions contemplated hereby at his own expense, except that he will not be expected to pay bankruptcy fees or expenses in connection with any bankruptcy or composition proceeding nor counsel fees of the committee itself. He is hereby granted full authority to receive property in any exchange and authority to handle the property and to resell or otherwise deal, manage, or dispose thereof and he will be entitled to charge against said property the expenses of handling the same, including taxes and operating costs and other capital or current charges. He will reduce to cash any property he receives in exchange for properties already in the District. [26]

4. The said party of the second part shall surely and truly report and account to the Committee from

time to time on his acts and the results thereof and will deposit the cash proceeds thereof in the Anglo California National Bank of San Francisco, less his compensation.

5. It is understood that the party of the first part holds in trust of said indebtedness an amount approximately 89% of the total outstanding bonded indebtedness, and it is also understood that said party of the second part represents certain other of said bonded indebtedness not deposited with the Committee and in addition represents certain judgments against the said districts, and in this respect the Committee understands the possible conflict of interest and acknowledges that the same has been disclosed to the Committee, and nevertheless enter into this agreement.

6. The party of the second part undertakes the liquidation of said indebtedness through the means indicated by this agreement.

7. For his services in this matter the party of the second part shall receive a compensation to be determined as follows: The Committee shall receive 85% of the first \$89,000.00 received or made available for the Committee on account of said securities, and the said party of the second part shall receive as his compensation 15% thereof. As to any amount received for and on behalf of the Committee whether in cash, property or otherwise, over and above the said \$89,000.00, the Committee shall receive 50% thereof, the party of the second part shall be entitled to 50% thereof. [27]

In Witness Whereof, this agreement is executed
October 1, 1943.

VICTOR ETIENNE, JR.,
LEO G. MacLAUGHLIN,
RAYMOND F. GILL,
R. J. McMULLEN,
W. E. BUELL,

Members of Bondholders Protective Committee,
Party of the First Part.

/s/ W. COBURN COOK,

Party of the Second Part.

(Notaries and dates of acknowledgments.)

D. B. Richards, City and County of S. F.,
Nov. 22, 1943.

Emma L. Everest, Los Angeles, Nov. 23, 1943.

Catherine E. Keith, City and County of S. F.,
Nov. 26, 1943.

Chas. M. Miller, Alameda, Nov. 30, 1943.

A. H. Miller, Multnomah County, Oregon,
Nov. 4, 1943.

Gilbert Moody, Stanislaus, December 7, 1943.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS
OF LAW

The above-entitled matter coming on regularly to be heard upon the petition of the Baxter Creek Irrigation District for confirmation of its Plan of Composition of its indebtedness on the 7th day of

December, 1945, before the above-entitled Court, and Franklin A. Hill, Esq., appearing for petitioner and W. Coburn Cook, Esq., appearing for the Bondholders' Protective Committee for said District, and evidence, both oral and documentary, having been introduced and the matter having been submitted and it appearing that the petition having been duly and regularly filed and notices given thereon pursuant to the order of this Court and the matter having been set for hearing this date and the Court having considered the law and the facts and having arrived at its decision herein, now makes and files these, its Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

The Court finds the facts in this matter to be as follows: [29]

I.

That on the 17th day of September, 1945, the petitioner herein filed with this Court its verified petition seeking a composition with its creditors of its indebtedness under the provisions of the National Bankruptcy Act relative to local taxing agencies; that petitioner is an irrigation district organized and existing under and by virtue of the Irrigation District Law of the State of California and is a proper party and qualified to file its petition herein under the provisions of the National Bankruptcy Act and the laws of the State of California, and is located wholly within Lassen County, State of California, and wholly within the jurisdiction of this Court.

II.

That on the 17th day of September, 1945, this Court duly made and entered its order approving the filing of the aforesaid petition; that on the same date said Court duly made and entered its order directing that notice be given in accordance with the terms and provisions of said National Bankruptcy Act and setting a time and place for hearing thereon and providing for the notices as to the form, place, manner and date for filing of claims; that notice of time and place of hearing and notice as to the form, place, manner and date for filing of claims was duly and regularly given in accordance with the order of the above Court and of the National Bankruptcy Law; that no answers or objections were filed to said petition or Plan of Composition by anyone, including creditors and landowners, and the time expired for the filing of answers or objections.

III.

That the District owns, holds and controls none of the securities and claims affected by the Plan.

IV.

That the Plan of Composition has been submitted to and duly approved by the California District's Securities Commission.

V.

That said Plan of Composition as herein and herewith submitted is fair and reasonable and is not discriminatory and is equitable and for the best inter-

ests of the creditors and does not discriminate unfairly in favor of any creditor or class of creditors and has been accepted and approved as required by Chapter IX of the National Bankruptcy Act by more than 96% of the aggregate amount of claims of all classes, including deposited and non-deposited bonds, deposited and non-deposited coupon, deposited and non-deposited warrants and deposited and non-deposited judgments.

VI.

That the offer of the Plan of Composition and its acceptance are in good faith.

VII.

That it is for the best interests of all parties concerned, including the creditors, the landowners and the District that said Plan of Composition be approved and confirmed.

VIII.

That the bonds, coupons, warrants and judgments affected by this Plan are but a single clan of obligations, payable from a common source.

IX.

That the Petitioner has no funds in the bond, warrant, judgment or coupon funds and no funds in any other fund or source from which said securities or the judgments against said District can be or are entitled to be paid. [31]

X.

That the State of California has duly and regularly authorized said District to subject itself to the jurisdiction of the United States District Court and of this Court in proceedings under the National Bankruptcy Act.

XI.

That said District and petitioner is insolvent in that it is unable to pay its bonded indebtedness, coupon (interest) indebtedness, warrant indebtedness and judgment indebtedness or any one or more of said indebtedness as due; that it has been unable to pay the interest of its bonded indebtedness since 1925; that there is now due, owing and unpaid past due installments of interest on its said bonds an amount in excess of \$340,340.00; that the bonds, to wit, Nos. 1-511, First Issue, Series 1 to 18, 6% per annum (\$1,000.00 face value) in the total sum of \$511,000.00, are all of the general obligation bonds of the petitioner and are all now unpaid, due and owing; that it has not paid its warrant indebtedness as due for over twenty years; that the unpaid interest (now due and owing) on said warrants approximates and in certain cases exceeds the face amounts of said warrants; that the face value of said unpaid warrants amounts to \$54,537.66; that said District has never paid its judgments listed in the Plan; that it is not within the ability of the landowners and holders in said District to pay the said amount of past due interest and/or principal of said bonds, coupons, warrants and judgments;

that any levy (assessments) or levies to pay these said amounts would be confiscatory and would result in a disruption of the District and the abandonment of said land and would cause a loss to the Lassen County tax roll and would have a deleterious effect upon said District and upon the whole County of Lassen; that said District is now, and was [32] at the time of the filing of the Petition for Composition herein and had been for over twenty years prior thereto unable to meet its debts as they matured and was and now is insolvent.

XII.

That beginning with the year 1922 the taxpayers within said District commenced to default in the payment of the assessments levied by said District; that the rate of delinquency increased during each successive year thereafter that assessments were made; that the taxpayers were also unable to pay water tolls which were levied several years in lieu of assessments to pay the indebtedness of the District; that a great majority of said taxpayers also were unable to pay their State and County real property taxes; that as a result of the inability to pay taxes and district assessments a large proportion of the lands within the district were sold and deeded both to the State of California and to said District; that banks and other lending agencies have refused and still refuse to advance loans to farmers on their land within the district and/or to loan to the district; that the redemption costs for the 1943 and 1944 assessments amount to over \$2,500,000 as of

Sept. 17, 1945, for the lands within the district; that none of these assessments have been paid;

XIII.

That the lands within said District are of a poor quality; that they are situated in a dry arid region; that the rainfall is insufficient for the regular production of crops and a large proportion of the lands have no other source of water than the rainfall; that less than ten tracts listed in the Plan have any other water rights and these are of a third priority class and furnish insufficient water for the proper and economical farming of said tracts by themselves; that the District has been unable to supply water for over ten years last past and is still unable to do so;

XIV.

That the water rights, tunnel, riparian rights on Eagle Lake, flowage rights, easements, rights of way, right to lower the water in Eagle Lake, and other rights and properties of the Tule and Baxter Creek Irrigations Districts which are to be transferred to the Trustee for the benefit of the creditors [33] affected by the Plans for each District as set forth in said Plans are of the fair market value of \$325,000.00; that the Tule Irrigation District was and is the owner of 153/250 interest in the aforesaid rights and properties and the Baxter Creek Irrigation District the owner of an 97/250 interest; that the cost of the easements and rights of ways and the right to lower Eagle Lake, as distinguished from the right to withdraw water from Eagle Lake which latter

right was granted to said Districts by the Division of Water Resources of the State of California, cost the Districts in 1921 over \$150,000.00; that the cost of the tunnel to tap said lake cost approximately \$500,000.00; that the total cost of the tunnel, aforementioned rights and distributing system to said Districts in 1921 was \$1,250,000.00.

XV.

That W. Coburn Cook, representing over 79% of the outstanding bonds and accrued interest thereon, has entered into a contract with the petitioner which contract is the Plan of Composition; that over 96% of the aggregate amount of all claims of all classes affected by said Plan (the District owning, holding and controlling none) had accepted said Plan in writing at the time of the hearing on the merits.

XVI.

That W. Coburn Cook is an agent hired by the creditors he represents; that he has filed herein and offered in evidence his written contract of employment with said creditors and said contract, together with Paragraph III of said Plan, reveals the compensation that he is to receive for his work in effecting the plan of compensation with said District and acting as trustee under the plan filed herein in carrying out the provisions of the Plan and such compensation [34] is reasonable and fair and is the only compensation that he will receive for his efforts in this matter.

XVII.

That the statement of expenses filed by the Bond-holders Protective Committee is fair and reasonable; that the services of W. Colburn Cook in the Pueblo Trading Co. v. Baxter Creek Irrigation District No. 4195 L were performed in a representative capacity for all creditors of said District.

XVIII.

That the agreement between Franklin A. Dill, attorney for petitioner, and petitioner for his services in the negotiation, preparation, execution and prosecution of the Plan and the Petition for Composition and for obtaining the deposit and consent of holders of securities to be charged against the District is fair, reasonable and just; that said agreement together with the minutes of August 1, 1944, of said District which minutes the agreement modified and the statement of income and expenses of said District (both which were introduced into evidence) reveal the compensation that he is to receive for his aforesaid services, which is to be charged against and paid for by the District; that said agreement should be approved; that the aforesaid services have benefited the creditors, landowners and the District; that it is fair, just and reasonable that out of the compensation to be allowed W. Coburn Cook as trustee, he is to pay the District the sum of \$250.00 to be disbursed and paid by the District to Franklin A. Dill in addition to the compensation he is to receive by virtue of the aforesaid agreement;

XIX.

That the statement of income and expenses of the [35] District paid and/or incurred incident to the negotiation, preparation, execution and prosecution of the Plan of Composition and for obtaining the deposit and consent of holders of securities is fair, reasonable, and just and should be allowed and approved; that the aforesaid expenses and the expense for compensation for the attorney of petitioner referred to in Finding XVIII should be paid from the funds disclosed in said statement and from an additional 3% assessment to be levied against the amount listed in the column labeled "Amount" in (Exhibit) Schedule "B" of the Plan of Composition for each of the tracts (plats) of land subject to assessment for the indebtedness of the District which are listed on pages 1 to 9 inclusive in (Exhibit) Schedule "B" to the Plan now on file herein; that said 3% assessment should be added to the sum listed in the column labeled "Total Amount" in said Schedule "B" to the Plan, and the total amount is to be used as the redemption value under the Plan; that said assessment is fair, just, equitable, and reasonable; that the funds to be produced and raised by the aforesaid 3% assessment are to be returned to the District by the depositary provided for in said Plan as each tract is redeemed pursuant to said Plan and/or as each tract is deeded to the Trustee pursuant to said Plan; that the funds raised by the said assessment shall be returned to the District by the depositary at the same time as the funds known as "Bal: Exp: Assess:" in (Exhibit) Sched-

ule "B" of the Plan are returned and shall be in addition to such "Bal: Exp: Assess:" funds; that the Trustee shall see that the depositary returns and pays said funds as above provided; that the aforementioned modification of said Plan is not materially adverse or adverse to any degree or extent to any creditors or holder or owner of any security, claim or land affected by this Plan and proceeding.

XX.

That no fiscal agent, person, attorney, firm or corporation is to receive any compensation either directly or indirectly from said petitioner, the creditors or from both the creditors and the petitioner, or from any of the creditors either by fee, commission, or other similar payment, or by transfer or exchange of bonds or other evidence of indebtedness whereby a profit could accrue or otherwise in consummating the said plan; that the only compensation and payment of expenses to be received and allowed to any fiscal agent, attorney, person, firm or corporation are those reasonable and just expenses connected with or incidental to these proceedings and which are disclosed in Findings XVI, XVII, XVIII and XIX.

XXI.

That the present or future owners of any of the aforesaid tracts of land may take advantage of Paragraph VII of the Plan of Composition in this Court or in any other competent Court at any time prior to April 24, 1947.

XXII.

That each, all and every redemption value set up in the Plan and as modified in Finding XIX are fair, just and reasonable.

XXIII.

That the Reconstruction Finance Corporation of the United States of America has refused to re-finance said District; that the Farm Debt Adjustment Committee of Lassen County has been unable to refinance said District or to pay or discharge its indebtedness either wholly or in part. [37]

XXIV.

That said Plan of Composition as filed and modified complies with the provisions of Chapter IX of the National Bankruptcy Act as amended.

XXV.

That said Plan of Composition has been accepted and approved as required and provided for by the provisions of subdivision (d) of Section 83 (U.S.C.A. Title 11, Section 403) of the National Bankruptcy Act as amended.

XXVI.

That the District is duly authorized by law to take all action necessary to be taken by it to file, prosecute, modify and carry out the Plan and the filing of said Petition and Plan were duly authorized by the duly qualified, elected, appointed and

acting officers and directors of Petitioner, and the filing of the Petition herein was authorized by a proper resolution duly passed and adopted by the Board of Directors of said District prior to the filing of said Petition and the execution of said Plan was likewise duly authorized by a proper resolution duly passed and adopted by said Board; that all Court and Clerk costs and fees and other fees required by law for the filing of said Petition and the giving of notice required by law have been duly paid.

XXVII.

That unless all holders of bonds, coupons, and warrants of the District and holders of judgments and actions against said District who may seek to enforce such securities and claims in a manner contrary to or inconsistent with the terms and provisions of the Plan of Composition herein provided for are restrained, the Petitioner would be interfered with in carrying out said Plan of Composition and the jurisdiction of this Court would be interfered with and the petitioner [38] would be irreparably damaged.

XXVIII.

That the Plan of Composition affects all the District's bonds, coupons, warrants, and judgments against said District; that it is the intention of the District and the Trustee that all of the aforementioned claims and securities are to be liquidated, discharged, paid and satisfied pursuant to the terms

of said Plan, and the orders of this Court whether said claims and securities are listed in said Plan or Petition or not; that the District reserves all rights and defenses referred to in Paragraph VI of its Petition.

XXIX.

That under said Plan, petitioner proposes to pay its creditors the largest amount that can be paid to them; that it is unable to pay any more to the creditors than as set forth in the Plan; that all the allegations in Paragraphs VII and VIII of the Petition are true; that the District assessments are far greater than the ability of the land to produce.

XXX.

That the modification of the Plan was authorized by proper resolutions duly passed and adopted by the Board of Directors of said District; that the Bondholders' Protective Committee and the other creditors named in the escrow instructions which are on file and were introduced in evidence and which together constitute the holders of over 93% in amount of all securities affected by the Plan (exclusive of any such securities owned, held or controlled by the Petitioner) consented in writing to the modification of the Plan; that the offer and acceptance of said modification are made in good faith; [39] that the Petitioner joined in the petition of Franklin A. Dill, its attorney, for an allowance for compensation and for approval of his agreement referred to in Finding XVIII.

XXXI.

That at the time of the filing of the Petition the petitioner was and now is insolvent; that under said Plan petitioner proposes to pay its creditors affected by the Plan the largest amount that can be paid to them. [40]

CONCLUSIONS OF LAW

From the foregoing facts, the Court concludes as a matter of law as follows:

I.

That this Court has jurisdiction of the subject matter of this proceeding and of all parties to and persons interested in this proceeding, including all persons affected by the Plan of Composition herein set forth.

II.

That the Plan of Composition herein set forth is fair, equitable and for the best interests of the creditors and does not discriminate unfairly in favor of any creditor or class of creditors; that under said Plan, petitioner proposes to pay its creditors the largest amount that can be paid to them; that the petitioner is unable to pay any more to the creditors than as set forth in the Plan.

III.

That the Plan of Composition herein sought to be confirmed complies with the provisions of Chapter IX of the National Bankruptcy Act (U.S.C.A. Title 11, Sections 401-404).

IV.

That said Plan of Composition herewith submitted for confirmation has been accepted and approved as required by the provisions of subdivision (d) of Section 403 of Title 11, U.S.C.A.

V.

That all amounts to be paid by petitioner for services or expenses incident to the composition have been fully disclosed and are reasonable; that the petition of Franklin A. Dill, Esq., attorney for petitioner, for an allowance for reasonable compensation for attorney fees for his legal services and advice in the negotiation, preparation, execution and filing of the Plan [41] of Composition should be granted and his agreement for compensation to be assessed against said District and paid by said District is fair and reasonable and should be allowed and approved and payment of an additional sum of Two Hundred Fifty and no/100 Dollars (\$250.00) should be made by W. Coburn Cook as Trustee from his compensation allowed pursuant to the Plan; that said Two Hundred Fifty and no/100 Dollars (\$250.00) should be paid to Petitioner who shall then pay said sum to its attorney, Franklin A. Dill, as part of the reasonable compensation to be allowed him; that the sum of Two Hundred Fifty and no/100 Dollars (\$250.00) is in addition to the payment provided for in said agreement and is allowed and assessed pursuant to Section 403b of Title 11, U.S.C.A.; that the statement of expenses of the Bondholders' Protective Committee

and the contract of W. Coburn Cook, Esq., are fair and reasonable and should be allowed and approved.

VI.

That the offer of the Plan of Composition herein submitted for confirmation and its acceptance are in good faith.

VII.

That the petitioner herein is authorized by law to take all action necessary to be taken by it to carry out the plan herewith submitted for confirmation.

VIII.

That the petitioner herein is entitled to have an order and decree confirming and approving the Plan of Composition herein submitted for confirmation.

IX.

That the petitioner herein is entitled to an injunction against the holders and owners of all its bonds, coupons, warrants and judgments against said petitioner affected by the Plan of Composition as filed and as modified by this Court enjoining and [42] restraining all of such owners and holders from in anywise commencing or prosecuting any action or actions or otherwise seeking to enforce any of said bonds, coupons, warrants and judgments in any manner inconsistent with or not in conformity with the terms and provisions of said Plan of Composition herewith approved.

X.

That the petitioner herein was at the time of the filing of its petition in this matter, and is now, unable to meet its debts as they mature, except only in accordance with the terms or provisions of the Plan of Composition herein submitted for confirmation.

XI.

That at the time of the filing of petitioner's petition herein, creditors of the petitioner owning not less than 80 percentum in amount of the securities affected by the Plan of Composition herein submitted for confirmation (excluding, however, any such securities owned, held or controlled by the petitioner) had accepted in writing said Plan of Composition.

XII.

That at the time of the trial of the issues herein the Plan of Composition herein submitted for confirmation had been accepted in writing by and on behalf of creditors holding in excess of 96 per centum of the aggregate amount of claims of all classes affected by said Plan (excluding claims owned, held or controlled by petitioner).

XIII.

That all of the securities and claims affected by the Plan of Composition are of one class; that the creditors of the District affected by the Plan are those designated and referred to in the Plan and Petition of Confirmation; that all holders of securi-

ties and claims as listed in said Plan and Petition and/or of the same nature are affected by the Plan.

XIV.

Any landowner listed in Schedule B of the Plan or his successor and/or the holder of any interest in said land have the right to contest the liability of said land or lands to the operation of this Plan, in this Court or any other Court, on the ground that said land or lands are not now or never were within the boundaries of the Petitioner.

XV.

That the statement of income and expenses of the District paid and/or incurred incident to the negotiation, preparation, execution and prosecution of the Plan of Composition and for obtaining the deposit and consent of holders of securities is fair, reasonable, and just and should be allowed and approved; that the aforesaid expenses and the expense for compensation for the attorney of petitioner referred to in Finding XVIII should be paid from the funds disclosed in said statement and from an additional 3% assessment to be levied against the amount listed in the column labeled "Amount" in (Exhibit) Schedule "B" of the Plan of Composition for each of the tracts (plats) of land subject to assessment for the indebtedness of the District which are listed on pages 1 to 9 inclusive in (Exhibit) Schedule "B" to the Plan now on file herein; that said 3% assessment should be added to the sum listed in the column labeled "Total Amount" in

said Schedule "B" to the Plan, and the total amount is to be used as the redemption value under the Plan; that said assessment is fair, just, equitable, and reasonable; that the funds to be produced and raised by the aforesaid 3% assessment is to be returned to the District by the depositary provided for in said Plan as each tract is redeemed pursuant to said Plan and/or as each tract is deeded to the Trustee pursuant to said Plan; that the funds raised by the said [44] assessment shall be returned to the District by the depositary at the same time as the funds known as "Bal: Exp: Assess:" in (Exhibit) Schedule "B" by the Plan are returned and shall be in addition to such "Bal: Exp: Assess:" funds; that the Trustee shall see that the depositary returns and pays said funds as above provided: that the aforementioned modification of said Plan is not materially adverse or adverse to any degree or extent to any creditors or holder or owner of any security, claim or land affected by this Plan and Proceeding.

XVI.

That no fiscal agent, person, attorney, firm or corporation is to receive any compensation either directly or indirectly from said petitioner, the creditors or from both the creditors and the petitioner, or from any of the creditors either by fee, commission, or other similar payment, or by transfer or exchange of bonds or other evidence of indebtedness whereby a profit could accrue or otherwise in consummating the said plan; that the only

compensation and payment of expenses to be received and allowed to any fiscal agent, attorney, person, firm or corporation are those reasonable and just expenses connected with or incidental to these proceedings and which are disclosed in Findings XVI, XVII, XVIII and XIX.

XVII.

That the present or future owners of any of the aforesaid tracts of land may take advantage of Paragraph VII of the Plan of Composition in this Court or in any other competent Court at any time prior to April 24, 1947. [45]

XVIII.

That the modification of the Plan was authorized by proper resolutions duly passed and adopted by the Board of Directors of said District; that the Bondholders' Protective Committee and the other creditors named in the escrow instructions which are on file and were introduced in evidence and which together constitute the holders of over 93% in amount of all securities affected by the Plan (exclusive of any such securities owned, held or controlled by the Petitioner) consented in writing to the modification of the Plan; that the offer and acceptance of said modification are made in good faith;

XIX.

That at the time of the filing of the Petition, the petitioner was and now is insolvent; that under

said Plan petitioner proposes to pay its creditors affected by the Plan the largest amount that can be paid to them;

XX.

That the petitioner is entitled to a decree confirming the Plan of Composition herein submitted for confirmation and as modified by the Court as set forth in Finding XIX on file herein, and in accordance with these findings and conclusions that said Plan of Composition shall be, and is hereby, made effective forthwith and the same shall become and be binding upon all creditors and claimants affected by the Plan forthwith, and the Baxter Creek Irrigation District, petitioner, is hereby authorized and directed to take all necessary or desirable steps, in accordance with its terms as modified. [46]

XXI.

That the Plan of Composition as filed and as modified affects all the District's bonds, coupons, warrants, and judgments against said District and the Trustee and the District intend that all of the aforementioned claims and securities be liquidated, discharged, paid and satisfied pursuant to the terms of said Plan and the orders of this Court whether said claims and securities are listed in said Plan or Petition or not; that the District reserves all rights and defenses referred to in paragraph VI of its Petition.

XXII.

That under said Plan, petitioner proposes to pay

its creditors the largest amount that can be paid to them; that it is unable to pay any more to the creditors than as set forth in the Plan.

Dated this 3rd day of January, 1946.

/s/ MARTIN I. WELSH,

Judge,

United States

District Court.

[Endorsed]: Filed Jan. 3, 1946. [47]

In the United States District Court for the Northern
District of California, Northern Division

No. 10750

IN THE MATTER OF THE BAXTER CREEK
IRRIGATION DISTRICT,

Bankrupt.

INTERLOCUTORY DECREE

The above entitled matter, after notice duly and regularly given, having regularly come on for hearing on the 7th day of December, 1945, before the above entitled Court, Honorable Martin I. Welsh, District Court Judge presiding, upon the merits of the Plan of Composition proposed by Petitioner, Baxter Creek Irrigation District, upon the petition filed by said Petitioner; and Franklin A. Dill, Esq. appearing for the Petitioner and W. Coburn Cook,

Esq. appearing for the Bondholders Protective Committee; and

It appearing and having been found by this Court that said petition was properly filed under Chapter IX of the National Bankruptcy Act as amended (U. S. C. A. Title 11, Sections 401-404) and that said petition complies with said Chapter and was filed in good faith; and

It appearing that all due and required notice and notices have been duly and regularly given; and

It appearing that the Plan of Composition filed and submitted with the petition had at the time of said filing been consented to and accepted by creditors owning not less than [48] eighty (80) per centum in amount of the securities affected by the Plan (the District owning, holding and controlling none of said securities); and

It appearing at the hearing on the merits that at said time creditors holding in excess of ninety-six (96) per centum of the aggregate amount of claims of all classes affected by said Plan (the District owning, holding and controlling none) had accepted said Plan in writing; and

The matter having been heard and submitted for decision upon evidence, both oral and documentary, and the Court having made and filed written findings of fact and the said Judge's conclusions of law and having determined and decided that said Plan of Composition as prepared, filed and modified and submitted should be approved and confirmed:

Now, therefore, it is hereby ordered, adjudged and decreed as follows:

1. That said petition was and is properly filed under Chapter IX of the National Bankruptcy Act (U. S. C. A. Title 11, Sections 401-404) and that said petition complies with said Chapter and was filed and is proposed and prosecuted in good faith, and that this Court has jurisdiction of said petition and the subject matter thereof and that the filing of said petition was duly authorized by the duly qualified, elected, appointed and acting officers and directors of Petitioner.

2. That the Petitioner, Baxter Creek Irrigation District is a duly and regularly organized and acting irrigation district under the California Irrigation District Act and the laws of the State of California, and that said Petitioner, as such duly and regularly organized and existing irrigation district did prepare, file and submit with said Petition the Plan of Compostion attached to the Petition, reference to which is hereby made and by such reference incorporated herein. [49]

3. That at the time of the filing of said petition creditors of the Petitioner owning in excess of eighty (80) per centum in amount of the securities affected by said Plan (exclusive of any such securities owned, held or controlled by the Petitioner) had in writing accepted said Plan.

4. That at the time of said hearing on the merits creditors of the petitioner owning and holding in excess of ninety-six (96) per centum of the aggregate amount of all claims of all classes affected by said Plan (excluding all claims owned, held or controlled by the Petitioner) had accepted in writing said Plan as filed and as modified.

5. That Petitioner was and now is insolvent and unable to meet its debts as they mature, although it has made diligent effort so to do, and that said Plan of Composition as prepared, filed, modified and submitted herein, is fair, equitable, and does not discriminate unfairly in favor of any creditor or class of creditors.

6. That said Plan of Composition as filed and as modified has been accepted and approved as required and provided for by the provisions of Subdivision (d) of Section 83 (U. S. C. A. Title 11, Section 403) of the National Bankruptcy Act as amended.

7. That said Plan of Composition as filed and as modified complies with the provisions of said Chapter IX of said National Bankruptcy Act as amended.

8. That all amounts to be paid by the Petitioner for services or expenses incident to said Plan of Composition and said composition contemplated thereby have been fully disclosed and are fair and reasonable; that the expenses incurred in the negotiation preparation, execution, filing, and prosecution of said Plan and the expenses incurred and to be incurred in this proceeding and the expenses necessary to carry out this Plan as set forth in Findings XVIII and XIX, on file herein, be and they are hereby approved as reasonable and necessary and the Petitioner is [50] authorized and directed to pay to its attorney, Franklin A. Dill, Esq. his fees and expenses and to pay each and all other items and amounts as set forth in said Findings as are necessary to carry out this Plan; that W. Co-

burn Cook, as Trustee, be and hereby is directed and ordered to pay to Petitioner the sum of \$250.00 to be paid by Petitioner to its said attorney in addition to the compensation due said attorney under his agreement with said Petitioner which said agreement is hereby approved.

9. That the statement of expenses of the Bondholders Protective Committee and the contract of W. Coburn Cook, Esq. are fair and reasonable and they and each of them are hereby allowed and approved.

10. That no fiscal agent, person, attorney, firm or corporation is to receive any compensation either directly or indirectly from said Petitioner, the creditors, from both the Petitioner and the creditors, or from any of the creditors either by fee, commission, or other evidence of indebtedness or otherwise whereby a profit could accrue in consummating the said plan; that the only compensation and payment of expenses to be received and allowed to any fiscal agent, person, attorney, firm or corporation are those reasonable, fair and just expenses connected with or incidental to those proceedings and which are disclosed in Findings XVI, XVII, XVIII and XIX.

11. That the offer of said Plan of Composition as filed and as modified and its acceptance and acceptances are in good faith.

12. That the Petitioner is authorized by law to take all action necessary to be taken by it to carry out the said Plan of Composition as filed and as modified.

13. That said Plan of Composition attached to the Petition herein as modified in Finding XIX and paragraph 14 of this decree be and it is hereby approved, confirmed, adopted, and allowed and said Plan of Composition as modified and submitted herein is [51] herein incorporated by reference and made a part hereof.

14. That the expenses and attorney fees referred to in Findings XVIII and XIX and which were approved and allowed in paragraph 8 of this decree should be paid from the funds disclosed in the Statement of income and expense referred to in said findings and from an additional 3% assessment to be levied against the amount listed in the column labeled "Amount" in (Exhibit) Schedule "B" of the Plan of Composition for each of the tracts (plats) of land subject to assessment for the indebtedness of the District which are listed on pages 1 to 9, inclusive, in said Schedule to said plan now on file herein; that said 3% assessment should be added to the sum listed in the column labeled "Total Amount" in said Schedule "B" to the Plan and the sum of the "Total Amount" and the said 3% additional assessment is to be used as the redemption value under the Plan; that said assessment is fair, just, equitable and reasonable; that the funds be produced and raised by the aforesaid assessment are to be returned to the District (Petitioner) by the depositary provided for in the Plan as each tract of land is redeemed pursuant to said Plan and/or as each tract is deeded to the Trustee pursuant to the plan; that the funds to be raised by

the said assessment shall be returned to the District by the depositary at the same time as the funds known as "Bal: Exp: Assess:" in (Exhibit) Schedule "B" of the Plan are returned and shall be in addition to such "Bal: Exp: Assess:" funds; that the Trustee shall see that the depositary returns and pays said funds as above provided; that the aforesaid modification of said Plan is not materially adverse or adverse to any degree or extent to any creditor or holder or owner of any security, claim or tract of land affected by this Plan; that the Plan of Composition as filed herein be and it is hereby modified as provided in this paragraph. [52]

15. That said Plan of Composition as adopted and approved in Paragraph 13 is hereby decreed to be, and is hereby made binding on all creditors affected by the said Plan of Composition, whether or not their claims have been filed or evidenced, and, if filed, or evidenced, whether allowed or not allowed, including creditors who have not, as well as those who have, accepted said Plan of Composition.

16. That each and all of the creditors of the Petitioner holding any security or securities affected by said Plan of Composition as adopted, including all of said bonds, all of said coupons, all of said warrants whether registered or not and all of said judgments, and the agents, servants, attorneys and employees of said creditors, or any of them, and their successors and assigns are hereby restrained and enjoined, from in anywise enforcing or attempting to enforce any of said bonds, coupons, warrants,

and judgments or any rights in connection therewith in any manner inconsistent with or contrary to the terms or provisions of said Plan of Composition or other than as in said Plan of Composition provided, and they and each of them be and hereby are enjoined, pending the entry of the final decree herein, from attempting the enforcement of any claim or lien by legal proceedings or otherwise which they may have against Petitioner or against any and all of the land situated within the boundaries of the District (Petitioner) and/or all land, if any, which was ever within said District.

17. That the presentation and submission of said unpaid bonds, coupons, judgments and warrants as in the Plan provided shall be, and is, a condition precedent to the right of any holder or owner of any bond, coupon, judgment or warrant to be paid or receive the payments provided for in said Plan of Composition or the enforcement thereof to the extent provided for in said [53] Plan of Composition.

18. That all bonds, interest coupons and warrants (irrespective of whether or not the same have been registered for nonpayment) of Petitioner and all judgments, more particularly described in the Plan of Composition and Petition herein and affected thereby, and which are to be made subject to the said Plan of Composition as adopted herein, are and were payable without preference out of funds derived from the same source or sources and were, and are, all of one class.

19. That all verified claims affected by the said

Plan of Composition and filed on or before December 7, 1945 are hereby allowed and approved and that such other claims filed before January 6, 1946 that may hereafter be approved by this Court shall be entitled to participate and share in the proceeds of the Plan of Composition as provided therein.

20. That this Court further hereby reserves the right and retains exclusive power and jurisdiction by appropriate order or orders hereafter entered to provide for and to carry out said Plan of Composition under and subject to the supervision and control of this Court and hereby specifically retains and shall have the exclusive jurisdiction of said cause and said Plan of Composition. That the debtor Baxter Creek Irrigation District or the Trustee may from time to time apply to this Court for such other order or orders as may be necessary to carry out and make effective this Interlocutory Decree and this Court hereby reserves and shall have full and complete jurisdiction of said Plan of Composition.

21. The depositary (disbursing agent) to wit: The First National Bank in Turlock shall pay only such claims as may have been approved by the Court and only as provided in the Plan of Composition, except upon further order of this Court. The approved claims shall be paid only upon the surrender to the [54] disbursing agent of the securities on which the respective claims are based, and only in conformity with the provisions of the Plan, except in case of claims on securities adjudged to have been lost which shall be paid upon the delivery to

said disbursing agent of satisfaction of the judgments which were based on said lost securities, and an assignment to the trustee by the claimant of all right, title and interest in and to said lost securities. That all securities shall be deposited with the depositary as specified in the Plan within twelve (12) months of the time when the Interlocutory Decree becomes final.

22. That the First National Bank in Turlock, Turlock, California, is hereby appointed disbursing agent pursuant to the Plan of Composition and is hereby ordered to carry out the terms of said Plan as filed and as modified by this Decree and the Trustee, W. Coburn Cook, is also ordered to see that said disbursing agent complies with this Decree.

23. That the Plan of Composition as adopted in Paragraph 13 of this decree is hereby made temporarily operative with respect to all securities affected hereby; that the petitioner is hereby authorized to and shall forthwith take all steps required herein, and by said Plan of Composition hereby adopted and confirmed, to carry the same into effect forthwith.

24. That the time for the filing of claims for securities and debts of the District be and hereby is extended until January 6, 1946, and if such creditors do not file a claim or claims by said date they each and all of them shall be forever barred from claiming or asserting against the Petitioner or any individually or publicly owned property located within the petitioning District or the owners thereof

any claim or liens, arising out of said securities or other claim against said District.

25. That the Plan of Composition affects all the District's bonds, coupons, warrants and judgments against said District; that [55] it is the intention of the District and the Trustee that all of the aforementioned claims and securities are to be liquidated, discharged, paid and satisfied pursuant to the terms of said Plan, and the orders of this Court whether said claims and securities are listed in said Plan or Petition or not; that the District reserves all rights and defenses referred to in Paragraph VI of its Petition; that the District has not waived any of said rights or defenses.

26. That the present or future owners of any of the tracts of land subject of this Plan may take advantage of Paragraph VII of the Plan of Composition in this Court or in any other competent Court at any time prior to April 24, 1947.

27. W. Coburn Cook named in the plan is designated and appointed Trustee for creditors herein and authorized to carry out the terms of the plan of composition, and he may apply to this Court for orders of assistance to that end or for instructions, upon notice to the petitioner. The compensation of said Trustee is fixed at fifteen per cent (15%) of the first Thirty Eight Thousand Eight Hundred and No/100 Dollars (\$38,800.00) received by the Trustee or desopitary on behalf of the creditors of the Baxter Creek Irrigation District, and fifty per cent (50%) of all amounts received in excess thereof whether in cash, property or other-

wise, and he may at his option take his fee either in cash or property received.

28. The District is authorized to make the transfers and conveyances to W. Coburn Cook, Trustee, as provided by the plan and the trustee is authorized and directed to accept such conveyances and to administer the properties and to rent, hypothecate, sell or otherwise operate the same as trustee as in his discretion may seem advisable and for such purpose may designate an agent or agents.

29. The water rights, tunnel, riparian rights of Eagle Lake, flowage rights, easements, rights of way, right to lower the water in Eagle Lake and other rights and the property of Tule Irrigation [56] District and Baxter Creek Irrigation District, except such as are physically within the boundaries of either of said districts, were acquired, owned and held by the districts in the proportion of 153/259 by Tule Irrigation District and 97/250 by Baxter Creek Irrigation District, and are to be conveyed by the districts to the Trustee for the benefit of the Creditors in that proportion, and when sold or disposed of by the Trustee are to be accounted for by the Trustee to the creditors of said districts in the proportions of 153 Tule Irrigation District and 97 Baxter Creek Irrigation District.

Dated this 3rd day of January, 1946.

MARTIN I. WELSH,
Judge of the United States
District Court.

[Endorsed]: Filed Jan. 3, 1946. [57]

AGREEMENT

This Agreement made and entered into this 28th day of August, 1945, by and between W. Coburn Cook, hereinafter referred to as the Trustee, and the Baxter Creek Irrigation District, hereinafter referred to as the District.

Witnesseth:

Whereas, the District is an Irrigation District duly organized under the laws of California relating to the organization of Irrigation Districts; that said Baxter Creek Irrigation District was organized in 1917 and since that date said District has existed continuously as an Irrigation District in Lassen County, California.

Whereas, on or about the 1st day of July, 1921, the District caused to be issued and sold in the manner provided by law its coupon bonds in the total sum of \$511,000 bearing 6% interest represented by coupons attached to each of said bonds, and such bonds being in the denomination of \$1,000.00 and payable to bearer, and numbered consecutively from 1 to 511 and maturing annually from 1926 to 1943;

And Whereas, none of the principal of said bonds has been paid and the interest coupons on bonds of said District due July 1, 1925, are partially in default, and all subsequent coupons are in default; and certain warrants of said district are in default;

And Whereas, the said Trustee has in his possession for the purpose of collection \$446,000 par value

of said bonds and interest coupons attached thereto which is 87.2% of the outstanding bonds; and said Trustee has in his possession certain judgments based on said bonds and coupons as more particularly set forth in Exhibit "A" attached to and made a part of this agreement;

And Whereas, the Pueblo Trading Company has secured a judgment in the United States District Court for the Northern District of California against the Baxter Creek Irrigation District in Action No. 4195 L, in the sum of \$35,013.16, and said judgment is dated the 20th day of March, 1940, and bears interest from such date until paid at the rate of 7% per annum. The aforementioned judgment represents a recovery on the following bonds and coupons together with accrued interest on the matured bonds and costs:

Bonds Nos. 21, 218, 219, 220, 221, 284, 285, 291, 292, 293, 294, 295, 296 (With July 1, 1925, and subsequent coupons on each and every bond).

And Whereas, the Baxter Creek Irrigation District has outstanding warrants in the principal sum of \$52,220.93, some of which warrants bear interest at the rate of 7% per annum and the interest earned on said warrants now approximates the principal of said warrants;

And Whereas, a compromise or liquidation of the outstanding bonds, coupons and warrants of the District and judgments against the District thereon must take into consideration the owners of the

bonds, coupons, warrants and judgments not held by the said Trustee. (These owners shall be herein-after referred to as the Non-Depositing Creditors);

And Whereas, a schedule has been prepared and attached hereto and marked Exhibit "A" and by reference made a part hereof containing the numbers, denominations, and amounts of all bonds, coupons and warrants of said District and judgments or suits against said District in the possession of said Trustee.

And Whereas, the District has made no levies for the purpose of paying the outstanding bonds, coupons, warrants and judgments since 1927, except a levy made in 1943 which has not been paid;

And Whereas, all the bonds, coupons, warrants, issued and judgments against said District and above-mentioned are [59] general obligations of the District;

And Whereas, it is agreed by the parties hereto that the outstanding bonds, coupons, warrants, and aforementioned judgments are in an amount greater than the District can pay, and said District is insolvent;

And Whereas, the said Trustee and the District have carried on negotiations looking toward a compromise and a reduction of the outstanding bond, coupon, warrant and judgment indebtedness of the District, and a waiver of the general obligation feature of the bond and other indebtedness and an agreement permitting any individual landowner to

pay his adjusted share of the outstanding bond and other indebtedness and thus relieve his land of further liability for the payment of all the outstanding bond, interest (coupon) and warrant indebtedness, and other indebtedness represented by judgments thereon against said District;

And Whereas, a schedule has been prepared by the parties hereto in which each tract of land in the District has been listed and an amount set down opposite the description of each tract, which amount is substantially less than the present liability of such land for the payment of the present indebtedness of the District and such schedule has been attached hereto marked Exhibit "B," and by reference made a part of this contract;

Now, Therefore, in consideration of the mutual covenants the parties hereto agree as follows, and submit the following as a plan of composition in accordance with the provisions of Section 81 to 84 of the United States Bankruptcy Act.

I.

That the said Trustee, as trustee for all bond-holders, coupon holders, warrant holders and such judgment holders will accept from any individual landowner in the District in full settlement of the liability of such land for the payment of all the outstanding bonds, coupons and warrants of said District [60] and judgments thereon against said District, the amount set forth in Exhibit "B" and labeled "Total Amount" opposite the description

of such land if paid in either of the ways herein-after specified;

(a) If the above referred to amount set forth in Exhibit "B" is paid in cash on or before 90 days after the time for appeal from the entry of an interlocutory decree approving this plan by the United States District Court has expired or within 90 days from the time any or all appeals from said interlocutory decree affirming the plan of composition are finally disposed of, whichever period is the longer, a 7½% discount will be allowed;

(b) If no appeal is taken and the above referred to amount set forth in Exhibit "B" is not paid within 90 days after the time for appeal from the interlocutory decree approving this plan by the United States District Court has expired, the above referred to amount will be accepted during a period of one year from the date of the interlocutory decree approving this plan, and thereafter the amounts listed in Exhibit "B" will be increased 10% each year until paid;

(c) If an appeal or appeals are taken from the interlocutory decree and the provisions of I(a) are not taken advantage of the above referred to amount will be accepted during a period of one year from the date of the final determination of said appeal or appeals affirming the plan of composition, and thereafter the amounts listed in Exhibit "B" will be increased 10% each year until paid;

(d) Should any landowner desire to postpone payments over a period of years, the said Trustee will accept a Note and Deed of Trust as hereinafter provided, in an amount equal to the amount above referred to in Schedule "B," provided, however, that such amounts shall be increased 10% for each year after the first year following the entry of the interlocutory decree approving this plan, if no appeal is taken, otherwise if any appeals are taken such amount shall be increased 10% for each year after the first year following the disposition of any and all appeals, affirming the plan. Such note and deed of trust shall be for a term of not [61] to exceed 10 years and shall bear interest at the rate of 4½% per annum from the date of execution of the Note and Deed of Trust upon the unpaid principal and such Note and Deed of Trust shall be payable as follows:

10% of the principal upon the execution of such Note and Deed of Trust, and 10% or more of the remaining principal and the earned interest each year thereafter, until the full sum of principal and earned interest is paid in full; provided, however, that any landowner desiring to relieve his land of debt by the execution of a Note and Deed of Trust shall furnish the said Trustee with satisfactory proof that all taxes, liens and encumbrances are paid in full, and further satisfactory proof that such landowner has merchantable title to the land sought to be conveyed in trust, which proof may be by

abstract or a policy of title insurance issued by a company authorized to do such business in California. Taxes and assessments which have become a lien but are not yet payable shall be excepted from the foregoing. The Deed of Trust shall provide for the payment of current taxes by the landowner. The policy to be delivered contemporaneously with the recordation of the Deed of Trust.

The Trustee covenants, consents and agrees as Trustee for all holders of bonds, coupons, warrants and judgments, that upon the exercise by any or all of the landowners of any of the options set forth above in (a), (b), (c) and (d) of Paragraph I that the land and/or lands of said landowners or any or all of them may be excluded from the boundaries of said District upon the petition of said landowner or landowners and that said Trustee shall not make or interpose any objection to such exclusion or exclusions either as Trustee for the disposition of monies received on behalf of the above mentioned creditors of said District and/or as the holder of any interest or title to any lands, property or other rights located within or without the boundaries of said District and acquired pursuant to this agreement and/or plan of composition. [62]

Provided further that it is understood and agreed that the term landowner used in this paragraph shall be interpreted to mean only an individual landowner, or his heirs, devisees, assigns and/or personal representatives, and not the Baxter Creek

Irrigation District or any other municipal or public corporation.

Provided, however, that the landowner shall under all circumstances have the right within a period of 90 days after the time for appeal from the interlocutory decree has expired or within 90 days from the time any or all appeals from said interlocutory decree are finally disposed of or on or before April 24, 1947, whichever period is the longest, to exercise any of the landowner options granted herein. Provided, however, that if the landowner does not exercise one of the options provided for in Paragraph I (a), (b), (c), or (d) within the longest period provided for in this paragraph, then the landowner's option shall thereupon terminate. Should the landowner exercise any of the options given him herein within the time so provided the Trustee shall quitclaim to him any tax title acquired under this agreement.

II.

That in consideration of the agreement by said Trustee to release the land in the District from liability for payment of the outstanding bonds, coupons, and warrants of the District and Judgments thereon against said District in the manner provided above, the District agrees:

(a) To pay to the said Trustee all money in the Bond Fund and Warrant Fund of the District upon the entry of the interlocutory decree approving this contract and plan of composition by the

United States District Court as hereinafter provided in Paragraph II, Section (e) hereof or within 90 days after the time for appeal from said decree has expired whichever is the longer, and to pay to the said Trustee from time to time all money that thereafter may accrue to said Bond and Warrant Fund and also to make the necessary levies for bond, interest, warrants and judgments in an amount sufficient to carry out the provisions of this agreement; [63]

(b) To enforce the collection of such levies referred to in (a) and take deeds at the time and in the manner provided by the laws of California. The District shall take all deeds to all lands sold to the District for delinquent levies made on or after the year 1942 immediately upon the expiration of the time provided for redemption, and also on or after April 24, 1947, upon request of the Trustee shall take tax deeds for delinquent levies made prior to 1942.

(c) To cancel any such levies heretofore made or hereafter to be made upon lands in the District which have been released from liability for the payment of the aforementioned outstanding bonds, coupons, warrants and judgments in the manner provided in Paragraph I hereof and upon lands conveyed to said Trustee pursuant to this plan; provided that the amount of such sums so cancelled shall be considered paid and be credited on the books of the District as a payment upon the outstanding bonds, interest coupons, and warrants of

said District and judgments against the said District, and the parties hereto agree that the bond, interest, (coupon) warrant and judgment debt shall thereupon be deemed to be paid and reduced in the amount of the assessment so cancelled. That such cancellation shall not alter any of the other terms of this contract or void the consideration therefor.

(d) Within 6 months after the entry of the interlocutory decree approving this plan or within 6 months after the disposition of all appeals from said decree, whichever period is the longer, the District agrees to secure by negotiation or purchase all title of the State of California arising from real property tax sales in and to the lands to which the District also holds title except as to land owned by the State of California for highway, school, and other than tax purposes and to execute and deliver to the Trustee a deed to such property then standing in the name of the District. The Trustee hereby covenants and agrees that he will pay to and reimburse the District one-half of the cost and expense [64] incurred by the District in acquiring the aforementioned tax titles of the State of California. Neither the Trustee nor the District is obligated to expend more than \$500 in acquiring tax titles of the State of California.

Within 90 days after the time for appeal from the interlocutory decree approving this plan has expired or within 90 days from the time any or all appeals from said interlocutory decree are finally disposed of, whichever period is the longer, and

thereafter as title is acquired, said District shall convey to the said Trustee all lands theretofore or thereafter acquired by the District by reason of non-payment of 1943 or future assessments. Said deeds and conveyances to the Trustee shall convey such interest as the District may have at the time of the delivery thereof, provided the District shall only be required to execute to the Trustee a quit-claim deed to any right of way or property acquired by it from any railroad company. All property conveyed to the Trustee shall be released from liability to pay the outstanding bonds, coupons, warrants and judgments but said property shall remain and be liable for such pro rata assessments as are necessary to be levied by the District to carry out this plan. All such property so conveyed to the Trustee shall be sold or rented by him or his hired agent on such terms and at such prices as he shall determine in his best judgment as Trustee for all the holders and owners of bonds, coupons and warrants of the District and judgments against said District.

(e) To institute upon the execution of this agreement, and carry to a conclusion a proceeding in the United States District Court of the Northern District of California, under the provisions of the Bankruptcy Act of the United States relating to debt adjustments of Municipal Corporations, for the purpose of:

(1) Securing the confirmation of this plan by the said Court.

(2) Binding to the terms of this plan all outstanding bonds, warrants, and coupons issued by the District and judgments thereon as provided by the said Bankruptcy Act; and [65]

(3) Securing the confirmation of the Court to the provisions of this plan relating to the distribution of the moneys received by the Trustee as provided herein.

(f) It is also agreed and understood that the District on or before 90 days after the entry of the interlocutory decree approving this plan by the United States District Court as provided above or within 90 days after the disposition of all appeals from said decree, whichever period is the longer, shall convey on demand to the said Trustee or order by quitclaim deed or assignment without warranty of title or right to convey all flowage rights, water rights, easements, rights of way, flumes, pipe lines, canals, dams, diversions, tunnels, causes of action now owned by said District, and all real and personal property and other property of a like nature now owned by said District and which were purchased by the issuance of the bonds mentioned and described above or otherwise but excepting the District seal, minute and other books, assessment rolls, resolution book, stationery and funds raised or to be raised for the purpose of carrying out this plan and governing the District, and the cause of action and any proceeds therefrom of said District against Collins Pine Co., No. 6082.

The foregoing items shall be by way of example

only and not exclusive, it being the intention of the parties that all property both real and personal and all other rights or assets of any kind or character and not heretofore excepted which are now owned by said District as a result of the construction and operation of the Irrigation System purchased by the issuance of the bonds and warrants listed and described above herein or otherwise, shall be conveyed to the Trustee.

The Trustee agrees to execute a quitclaim deed to any landowner relieving his land of debt as herein provided quitclaiming unto said landowner all easements acquired pursuant to this paragraph over the lands of such landowner so relieved of [66] said debt. The form of deed attached hereto and marked Exhibit "C" contains this clause. Said quitclaim, however, is not intended to relinquish any interest in any main, lateral or canal.

III.

All payments made to said Trustee as Trustee for all the creditors of said District including bond-holders, judgment holders, warrant holders, and coupon holders under this plan, and the net proceeds received by him from the sale or rental of any lands or property acquired by him by deed or otherwise from the District or by foreclosure of any mortgage or deed of trust held by him (after deducting taxes, operating expenses, and capital charges in connection with such land) shall be deposited by the said Trustee forthwith in the First

National Bank in Turlock, Turlock, California, and from such moneys (excepted as provided in paragraph III hereof) so deposited the First National Bank shall deduct:

I. All its reasonable charges and expenses, including depositary fees.

II. A reasonable compensation for the services of Trustee in the negotiation of the contract of composition and in the liquidation of the assets to be received by him, which compensation shall be fixed by the Court, and also his reasonable costs and expenses, including assessments or other payments payable to the District hereunder.

Provided, that the amount deducted by said First National Bank in Turlock with respect to all of the matters referred to in items I and II above shall not exceed 15 per cent of the first \$100,000 received by said First National Bank (including in said sum of \$100,000 any amounts received by or for the account of the settlement made with Tule Irrigation District, pursuant to the agreement between Tule Irrigation District and the Trustee made contemporaneously herewith) nor more than 50 per cent of any additional sums received by said First National Bank over and above said first \$100,000.00 (whether received by or for the account of Baxter Creek Irrigation District or Tule Irrigation District [67] pursuant to this agreement of composition or said agreement of composition made con-

temporaneously herewith in connection with said Tule Irrigation District), and

III. The amounts of the Balance of Expense Assessment referred to in Schedule B as "Bal:Exp:Assess:" as to those parcels affected thereby shall be paid to the Treasurer of said District for the purpose of carrying out this plan when said parcels or any of them affected thereby are deeded to the Trustee and/or when the owners of said parcels or any of them redeem said parcels pursuant to this plan. The owners of each and every parcel listed in Schedule B for which no sum is listed in column "Bal: Exp: Assess:" have heretofore paid their expense assessment to the District Treasurer as shown by his official record book for the purpose of carrying out this plan and the said Bank shall also pay said District the further sum of \$194.00 to help cover the District's expenses in carrying out this plan.

Provided that the amounts received by the First National Bank in Turlock from the source of payment referred to in Schedule B as Balance of Expense Assessments as set forth in Schedule B shall be held separate and apart from all other moneys, and shall be accounted for by the First National Bank as provided in said Paragraph III; and shall be disbursed only from the moneys collected from such excess assessments and not otherwise.

And shall then divide the balance remaining between the Non-Depositing Creditors and the said

Trustee in accordance with their proportionate interests therein as hereinafter more definitely provided, provided that the amounts payable to said Trustee on behalf of the Bondholders Committee shall be transmitted to the Anglo California National Bank in San Francisco, for account of the Committee for the holders of bonds and coupons, and judgments thereon.

That said First National Bank in Turlock shall pay the Non-Depositing Creditors and the Trustee from time to time on demand their respective shares of the mony so received as hereinafter determined. Provided, however, that before any Non-Depositing Creditor or the Trustee shall be entitled to receive any money from said First National Bank in Turlock, they or he must deliver to said First National Bank any evidence of indebtedness of the [68] District held by them or him, whether it be bonds, coupons, warrants or judgments and if the evidences of indebtedness be a judgment, or a pending and uncompleted suit or action against said District based upon bonds, coupons, warrants, or other judgments, an executed satisfaction of said judgment must be delivered together with the bonds, coupons, and warrants upon which the judgment and the suit or action are based and a dismissal with prejudice of said suit or action must be filed, provided that in the event that any Non-Depositing Creditor shall fail and neglect to deposit his bonds, coupons, warrants and judgments and execute satisfactions of said judgments and shall fail to execute

and file dismissals with prejudice as provided above within twelve months after the interlocutory decree becomes final he shall be deemed in default and forfeit the right to make any claim and the District's debt and obligation to said creditor shall be deemed discharged and liquidated in full and the amount that would have been payable to such defaulting creditor shall go back into the fund in the hands of the First National Bank in Turlock for redistribution to the other creditors. The Court may make provision for the payment of lost bonds, coupons, or warrants upon due proof of ownership and title.

For the purpose of determining the respective shares of the Trustee and the various Non-Depositing Creditors the following arbitrary schedule shall be used by the First National Bank in Turlock. [69]

I.

Half of the distribution from the composition shall be deemed paid on account of principal, and half on account of interest. The bonds and coupons, however, upon which judgments were rendered shall be surrendered for cancellation.

II. The Bonds and Coupons

Since the amount of interest now outstanding upon the bond issue is approximately equal to the face amount of the bonds outstanding and all bonds have matured, the amount of the bonded indebtedness to be used as the basis of distribution shall be

the amount of the outstanding bond issue; one-half of the distribution made from the composition shall, however, be deemed in payment of interest and one-half in payment of principal.

Provided, further, however, that should it appear that any coupons have been detached from the bonds to which they are appurtenant and are in separate ownership, the respective shares of the holder of the bond and the coupons shall be determined upon the basis of distribution of 50% to the bond and 50% to the coupons. The 50% allotted to the coupons shall be divided between the holders of the coupons in proportion to the number of coupons held by each owner. It is understood that the Trustee and depositary shall reduce any distribution to any bondholder whose bond has missing coupons by an amount to be determined as in this paragraph indicated.

III. Warrants

That since the amount of interest upon the outstanding [70] warrants is approximately equal to the face amounts of said warrants, the amount to be used in computing the share of said warrants shall be a sum equal to the face value of the warrants; half of the distribution from the composition to the holder of a warrant shall be deemed in payment of interest, and half in payment of principal.

IV.

It is further understood and agreed that whenever all lands in the District have been released

from liability for the bonds, coupons and warrants issued by the District and the judgments thereon against said District then the First National Bank in Turlock shall be authorized to deliver all of the bonds, coupons and warrants and judgments, together with the satisfactions of said judgments, bonds, coupons and warrants deposited with it to the District for cancellation and satisfaction and it is further understood and agreed that during the time this plan is in operation the warrants, judgments, bonds, and/or coupons now on deposit or which may hereafter be deposited with the First National Bank in Turlock pursuant to this plan shall be held by said First National Bank in Turlock in escrow and shall not be taken from said escrow except by agreement of the parties hereto.

V.

Individual landowners may make their offer to pay pursuant to the terms of paragraph (I) hereof, either to the said Trustee personally at Turlock, California, and/or to such persons as he may designate at Susanville, California, or Turlock, California, for the account of said Trustee, subject to escrow fees, if any.

VI.

Whenever land has been released from the obligation of coupons, bonds, warrants and judgments pursuant to Paragraph (I) hereof, the said Trustee shall make, execute, and deliver to the owner of such land a release substantially in the form of Ex-

hibit "C" hereto attached, which release shall be acknowledged [71] so that it may be recorded in the records of the County of Lassen.

VII.

It is further agreed that no segregation of the separately priced parcels shown in Exhibit "B" will be accepted and releases will only be executed for any entire parcel so separately described in Exhibit "B".

No mistake as to the name or identity of the person or persons alleged to be the owner or owners of the tracts in Schedule B and no mistake in the description of any of the tracts shall invalidate this agreement or void the consideration therefor. The United States District Court shall have the power to make all necessary corrections as to the aforementioned matters after being advised by competent evidence and satisfied as to the true facts.

If it should develop that any of the tracts in whole or in part are not subject to assessment to pay the aforementioned indebtedness of said District to be liquidated and discharged by this agreement and plan, such fact shall not invalidate this contract or void the consideration therefor.

VIII.

After all the bonded, warrant, coupon, interest, and judgment indebtedness of said District has been satisfied pursuant to the terms of this agreement and plan and the Orders of the United States

District Court said Trustee in his representative capacity as the representative of the aforementioned creditors of said District shall execute a general release to said District of any claim for said indebtedness against said District and against any and all of the lands within said District and/or liable for assessment to pay said indebtedness. Such release shall be acknowledged so that it may be recorded in the records of the County of Lassen. [72]

IX.

It is further agreed that, if for any reason this contract should not be approved by the U. S. District Court or upon appeal as provided in Paragraph II, Sec. (e) hereof, then it shall be void and of no effect and not binding on the parties hereto.

X.

Whenever the word "judgment" or "judgments" is used herein, it is intended to mean judgments upon bonds, coupons, or warrants and upon judgments based upon bonds, coupons and/or warrants.

It is the intention of the parties to this agreement and plan that all the District's bonds, coupons, warrants and judgments against said District are to be liquidated, discharged, paid and satisfied pursuant to the terms of this plan and orders of the United States District Court and that no mistake contained herein as to the amounts of said debts and obligations or any of them shall invalidate this contract or void the consideration therefor.

In Witness Whereof, the said W. Coburn Cook has hereunto set his hand the day and year first above written, and the Baxter Creek Irrigation District has caused these presents to be executed and its seal hereto attached by its President and Secretary thereunto duly authorized, the day and year first above written.

/s/ W. COBURN COOK,
Trustee,
Baxter Creek
Irrigation District.

[Seal of Baxter Creek Irrigation District]

By H. J. CLARK,
President.

By FERN S. OHMAN,
Secretary. [73]

Supplement to Baxter Creek Irrigation District (Cont'd)
 If U. S. District Court rules the following lands are not within the Baxter Creek
 Irrigation District they will not be considered as part of Exhibit "B".

Plat No.	Owner	All M.D.B. & M. Description	Bal. Exp. Assess	Total Amount	
Acres	Amount				
1.	Bailey, Lenora	Beginning Southwest corner NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Sec. 23, Twp. 28 N., Range 13 East, MDB&M; Thence north 46 degrees east 360 feet; thence north 30 degrees west 200 feet to the place of beginning; thence north 30 degrees west 890 feet; thence north 60 degrees 45' East 730 feet to the county road; thence south 28 degrees 30' east along the county road 755 feet more or less; thence south 50 degrees 46' west 840 feet to the place of beginning.	18	\$ 57.00	\$ 1.68 \$ 58.68
2.	Bailey, Lenora	Beginning at the southwest corner of the NE $\frac{1}{4}$ of Sec. 23, Twp. 28 N., Range 13 E; thence one-fourth mile east; thence north 331 feet to the county road; thence north 28 degrees 30' west along	19	342.00	10.05 352.05

Plat No.	Owner	All M.D.B. & M. Description	Acres	Amount	Bal. Exp. Assess	Total Amount
13. Farrell, Jas. M. and Amy	county road 815 feet more or less; thence south 50 degrees 46' west 840 feet more or less; thence south 30 degrees east 200 feet; thence south 46 degrees west 360 feet to the place of beginning.	8	144.00	4.23	148.23	
17. McRorey, George F. and Rachel	Beginning at the southeast corner of Section 25, Township 28 N., Range 13 E; MDB & M; thence north 1125 feet; thence southwesterly 1814 feet to a point on south line of Section 25; thence east 884 feet to the place of beginning.	100	355.00	10.44	365.44	

Plat No.	Owner	All M.D.B. & M. Description	Acres :	Amount	Bal. Exp. Asses.	Total Amount
21.	Stiles Estate May Florence, e/o Dermott Stiles	county road 42 chains; thence north 53 degrees east 380 feet; thence north 13 chains to the northeast corner of the NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 23; thence west $\frac{1}{4}$ mile to the place of beginning.			533.58	4887.53
		Commencing at the northeast corner of Sec. 26, Twp. 28 N. Range 13 E. MDB & M, thence running south $\frac{1}{2}$ mile, thence east $\frac{1}{2}$ mile, thence south $\frac{1}{2}$ mile, thence west $\frac{1}{4}$ mile, thence south $\frac{1}{2}$ mile, thence east $\frac{1}{2}$ mile, thence north $\frac{1}{2}$ mile, thence east $\frac{1}{4}$ mile, thence north $\frac{3}{8}$ mile more or less to the shore line of Honey Lake, thence following the shore line in a general northerly direction to a point where the north line of Section 25 intersects the shore line of Honey Lake, thence west along said section line 2 chains to the southeast corner of the SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Sec. 24, thence southwesterly in a direct line to the southeast corner of	143.69	5031.22		

Plat No.	Owner	All M.D.B. & M. Description	Acres:	Amount	Bal. Asses.	Exp.	Total Amount
		NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Sec. 25, thence north $\frac{1}{4}$ mile, thence west $\frac{1}{4}$ mile to the place of beginning. Excepting therefrom that por- tion described as follows: Beginning at the southeast corner of Section 25, Twp. 28 N., Range 13 E; MDB & M; thence north 1125 feet; thence southwesterly 1814 feet to a point on south line of Section 25; thence east 884 feet to the place of beginning.					
23.	Zeitler, Lyal and Cathleen	Beginning at the southeast corner of the NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Sec. 23, Twp. 28 N., Range 13 E., MDB&M. Running thence north 46 degrees east 360 feet; thence north 30 degrees west 1090 feet; thence south 60 degrees west 760 feet; thence south 30 de- grees east 1150 feet to the Wilbur Garden; thence north 63 degrees east 400 feet to the place of beginning.	22	73.00	2.15	75.15	

Plat No.	Owner	All M.D.B. & M. Description	Acres:	Amount	Bal. Exp. Asses.	Total Amount
6.	Clark, H. J. and Lurley	N $\frac{1}{2}$ of SW $\frac{1}{4}$ of NE $\frac{1}{4}$, N $\frac{1}{2}$ of S $\frac{1}{2}$ of NW $\frac{1}{4}$, of Sec. 1; N $\frac{1}{2}$ of SE $\frac{1}{4}$ of NE $\frac{1}{4}$, SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Sec. 2, Twp. 28 N., Range 13 E.	90	\$225.00	\$6.61	\$231.61

[Title of District Court and Cause.]

NOTICE OF APPLICATION FOR
INSTRUCTIONS AND ORDER

To Baxter Creek Irrigation District and to Franklin A. Dill, Esquire, its Attorney:

You and each of you will please take notice that on Monday, the 4th day of November, 1946, at the hour of ten o'clock a.m. of that day, or as soon thereafter as counsel can be heard, W. Coburn Cook, trustee herein, will apply to the court above named for instructions pertaining to his duties herein and for appropriate orders in connection with such instructions, all as set forth and proposed in the annexed application for instructions and order.

Dated October 24, 1946.

W. COBURN COOK,
Trustee.

[Endorsed]: Filed Oct. 26, 1946. [77]

[Title of District Court and Cause.]

APPLICATION FOR INSTRUCTIONS
AND ORDER

W. Coburn Cook, trustee in this matter, requests this Honorable Court to instruct him relative to the following matters:

1. A controversy has arisen as to whether certain lands which the Trustee contends are subject

to the indebtedness herein, it appearing to be the contention of the landowners that said lands have been excluded from the district, are in fact subject to said indebtedness and therefore subject to the provisions of the composition agreement herein, and it appears that said controversy cannot be determined unless either the landowners in question bring an action in the appropriate court to determine said matters or the trustee brings such action, and the trustee desires to commence an action against the landowners in question for determination of said matter and the trustee requests this court to instruct him in that regard and authorize him to commence an appropriate action for determination of said matters.

2. Certain lands in said district were at the time of the filing of the proceedings herein considered by the parties to be not subject to assessment for the indebtedness which is the [78] subject of the composition proceedings for the reason that they were considered to be lands of the United States and therefore not subject to such assessment but the trustee contends that said lands are subject to the provisions of the Smith Act of the Congress of the United States which under certain circumstances makes them liable for such assessments, and therefore said lands should not be relieved from the obligation to pay the indebtedness herein. The trustee is uncertain whether a proceeding should be undertaken to embrace said lands within the terms of the composition agreement or whether said lands should remain subject to the indebtedness and assessments

levied thereon and title subsequently obtained if such assessments are not paid transferred to the trustee and the trustee requests instructions in this regard as to what proceedings should be had, it being his position that the latter course is the appropriate one.

Wherefore, W. Coburn Cook as trustee herein requests this Honorable Court to instruct him in these matters and to make the appropriate order in accordance with the claims and recommendations of the trustee.

Dated October 24, 1946.

W. COBURN COOK,
Trustee.

STATEMENT RELATIVE TO THE ABOVE APPLICATION

Reference is made to Section 20 of the Interlocutory Decree herein where it is provided that the trustee herein may apply to the Court for an order to carry out and make effective the interlocutory decree and Section 26 providing that the owners of tracts may take proceedings to determine the question of whether their lands are subject to the terms of the composition and Section 27 providing that the Trustee may apply to the Court for orders of assistance and for instructions upon notice to the petitioner.

W. COBURN COOK,
Trustee.

[Endorsed]: Filed Oct. 26, 1946. [79]

At a stated term of the Northern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City of Sacramento, on Monday, the 4th day of November, in the year of our Lord one thousand nine hundred and forty-six.

Present: The Honorable Roger T. Foley,
District Judge.

[Title of Cause.]

ORDER RE APPLICATION FOR
INSTRUCTIONS

The application for instructions and order came on regularly this day to be heard. Franklin A. Dill, Esq., was present for and on behalf of the District. W. Coburn Cook, Trustee of said District, was present in proper person. After hearing Mr. Dill and Mr. Cook, it is Ordered that the application for instructions and order be submitted on briefs in 10-10-10 days. [80]

At a stated term of the Northern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, on Monday, the 17th day of March, in the year of our Lord one thousand nine hundred and forty-seven.

Present: The Honorable Roger T. Foley,
District Judge.

[Title of Cause.]

ORDER ON OPINION AND ORDER

The application for instructions and order having been heretofore heard and submitted, being now fully considered, it is, in accordance with an opinion and order heretofore signed herein on March 13, 1947, and filed this day, granted in part, and denied in part. [81]

[Title of District Court and Cause.]

DECISION ON APPLICATION FOR INSTRUCTIONS AND ORDER

The above entitled proceeding is under the Municipal Bankruptcy Act of the United States, Title 11, Secs. 401-403, U.S.C.A. The Baxter Creek Irrigation District is an irrigation district organized under the laws of the State of California and is a public agency.

On January 3, 1946, Honorable Martin I. Welsh, Judge of the above entitled Court, entered an Interlocutory Decree confirming a plan of composition.

On October 26, 1946, W. Coburn Cook, trustee in this matter, filed his "Application for Instructions and Order" praying that the Court authorize him to commence appropriate actions or take other appropriate proceedings for the purpose of determin-

ing whether certain lands may be subject to assessment for the indtebtedness which is the subject of these composition proceedings. The Baxter Creek Irrigation District and land owners H. J. Clark, Lurley Clark, Lenora M. Bailey, Lyal Zeitler, George McRorey, Rachel McRorey and Mr. and Mrs. G. A. Blickenstaff (successors in interest to Lyman Dermott Stiles) and James M. Farrell and Amy L. Farrell oppose the granting of the said "Application for Instructions and Order."

The trustee in his reply brief suggests that there are " * * * two parts to this matter. The first part relates [82] to the inclusion or exclusion from the boundaries of the district of certain lands which the Federal District Court held in Pueblo Trading Co. vs. Baxter Creek Irrigation District No. 4195L in this Court, reported in 61 Fed. Supp. 586, to have been excluded from the district. * * *"

In the action Pueblo Trading Co. v. Baxter Creek Irrigation District, 61 F. Supp. 586, H. J. Clark, Lurley Clark, Lenora M. Bailey, Lyal Zeitler, George McRorey, Rachel McRorey and Lyman Dermott Stiles filed a petition for an order to show cause for relief from the assessment, the subject matter of the action. Mr. and Mrs. G. A. Blickenstaff are successors in interest to the above named Lyman Dermott Stiles. In that action Judge Welsh held as follows:

"It is therefore held that the lands of the aforesaid petitioners herein, and each of them, are not located within the boundaries of the Baxter Creek Irrigation District, defendant in

above entitled action, are not subject to the indebtedness of said defendant, and are not liable or subject to assessment by said defendant, the Board of Supervisors of Lassen County, California, the Assessor, Tax Collector, Treasurer, or any other officer of said County, or any of them, to pay the judgment rendered in the above entitled action; and

“It is hereby further ordered that the order heretofore made herein on the 26th day of September, 1944, requiring that the Board of Supervisors and officers of Lassen County, California, prepare an assessment roll of said lands and assess said lands for the payment of the judgment in the above entitled action be amended so as to exclude the property described in Exhibit ‘A’ attached to the petition filed on the 2nd day of April, 1945.”

The decision of Judge Welsh in Pueblo Trading Co. v. Baxter Creek Irrigation District is an adjudication pronounced upon the status of the property of the above named owners in its relation to the Baxter Creek Irrigation District and is a holding by a competent tribunal that said property is not included within the Baxter Creek Irrigation District and such adjudication is binding on the irrigation district and any person asserting rights through, or as successors in [83] interest to, or by virtue of the irrigation district. The above named land owners should not again be required to meet the expense and inconvenience of newly instituted proceedings to determine the same questions de-

cided by Judge Welsh in their favor in the Pueblo Trading Co. case, *supra*.

What the trustee refers to as the other part of the controversy will now be considered.

Title 43, Sec. 621, U.S.C.A. reads as follows:

“Subjection of Lands in State Irrigation District to State Laws Generally. When in any State of the United States under the irrigation district laws of said State there has, prior to August 11, 1916, been organized and created or shall thereafter be organized and created any irrigation district for the purpose of irrigating the lands situated within said irrigation district, and in which irrigation district so created or to be created there shall be included any of the public lands of the United States, such public lands so situated in said irrigation district, when subject to entry, and entered lands within said irrigation district, for which no final certificates have been issued, which may be designated by the Secretary of the Interior in the approval by him of the map and plat of an irrigation district as provided in section 623 of this chapter, are hereby made and declared to be subject to all the provisions of the laws of the State in which such lands shall be situated relating to the organization, government, and regulation of irrigation districts for the reclamation and irrigation of arid lands for agricultural purposes, to the same extent and in the same manner in which the lands of a like character held under private

ownership are or may be subject to said laws: Provided, That the United States and all persons legally holding unpatented lands under entry made under the public land laws of the United States are accorded all the rights, privileges, benefits, and exemptions given by said State laws to persons holding lands of a like character under private ownership, except as hereinafter otherwise provided: Provided Further, That this chapter shall not apply to any irrigation district comprising a majority acreage of unentered land.”

If the trustee believes that there are public lands of the United States within the district liable for a portion of the indebtedness of the district, he should be permitted to take such proceedings as he may deem proper to obtain a determination of such liability and to subject such public lands to the same if found to exist.

The trustee is authorized within thirty (30) days from notice of this Decision, or within any such further time as may [84] be allowed by the Court, to institute such actions or proceedings as he may deem proper for the purpose of determining whether or not public lands of the United States situated within the said irrigation district should be subject to assessment for the indebtedness which is the subject of the composition proceedings, or for any other purpose which may be within the purview of the Interlocutory Decree filed herein January 3, 1946.

The application of the trustee insofar as it relates

to the land referred to in the case entitled Pueblo Trading Co. v. Baxter Creek Irrigation District, 61 F. Supp. 586, is denied.

The application of the trustee insofar as it relates to public lands of the United States situated in said irrigation district is granted.

Dated: This 13th day of March, 1947.

ROGER T. FOLEY,

United States District Judge.

[Endorsed]: Filed March 17, 1947. [85]

[Title of District Court and Cause]

NOTICE OF APPEAL TO THE CIRCUIT
COURT OF APPEALS FOR THE NINTH
CIRCUIT (UNDER RULE 75)

Notice is hereby given that W. Coburn Cook, as Trustee appointed by the court in this matter, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the "Decision on Application for Instructions and Order" entered in this action on March 17, 1947.

This appeal is from the whole of said Decision on Application for Instructions and Order except that part thereof which grants the application of W. Coburn Cook, Trustee, in so far as it relates to public lands of the United States situated in said irrigation district.

The appellant is W. Coburn Cook as trustee ap-

pointed by the court in said matter as representing all of the creditors of the Baxter Creek Irrigation District herein.

The respondents are the Baxter Creek Irrigation District and the landowners H. J. Clark, Lurley Clark, Lenora M. Bailey, Lyal [86] Zeitler, George McRorey, Rachel McRorey, Mr. and Mrs. E. A. Blickenstaff (successors in interest to Lyman Dermott Stiles) and James N. Farrell and Amy L. Farrell.

Dated: April 18, 1947.

W. COBURN COOK,
As Trustee appointed by the
Court herein. In Propria
Persona.

[Endorsed]: Filed Apr. 21, 1947.

EXHIBIT 29

Land in (Exhibit) Schedule B of Plan Baxter Creek Irrigation District

Tracts	Acreage	Refund to Dist.	Redemption Value
1-82	9,236.75	\$ 781.15	\$57,514.45
4, 5, 7, 11, 15, 16, 18, 19, 20, 21 (Supplemental)..	1,163.00	120.52	4,980.52
1, 2, 13, 17, 21, 23, 6 (on pages 10 & 11)	790.58 (a)	178.65	6,262.38 (a)
	11,190.33 (b)	\$1,080.52 (c)	\$68,757.35

(a) Tracts 1, 2, 17, 21, 23 & 6 were held not to be in said District by the United States District Court, Northern District of California, North-

ern Division in Pueblo Trading Co. v. Baxter Creek Irrigation District No. 4195 L so should be disregarded and not taken into consideration pursuant to the plan. (See 61 Fed. Supp. 586.) Tract 13, was also held not to be within said District pursuant to Stipulation and Order dated October 9, 1945, in Pueblo Trading Co. Case 4195 L.

- (b) This does not include 20 acres of Government land not subject to assessment.
- (c) This represents certain unpaid assessment money which together with \$194.00 is to be returned to the District to help pay expenses of proceeding. (See III page 10 A of Plan.)

RECAPITULATION

	Acreage	Refund to Dist.	Redemption Value
	11,190.33	\$1,080.52	\$68,757.35
((a) not subject to assessment)	790.58	178.65	
	10,399.75	{ \$ 901.87	
		(c) { 194.00	1,095.87
			\$67,661.48
			(a) 6,083.53
Total Redemption Value for Creditors.....			\$61,577.95

CERTIFICATE OF CLERK, U. S. DISTRICT COURT TO TRANSCRIPT ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing 95 pages,

numbered 1 to 95, inclusive, contain a full, true and correct transcript of certain records and proceedings in the Matter of the Baxter Creek Irrigation District, No. 10750, as the same now remain on file and of record in this office; said transcript having been prepared pursuant to and in accordance with the Designations of Contents of Record on Appeal, copies of which are embodied herein.

I further certify that the cost of preparing and certifying the foregoing Record on Appeal is the sum of Sixteen and 90/100 (\$16.90), and that the same has been paid to me by the attorney for the appellant herein.

In witness whereof, I have hereunto set my hand and the official seal of said District Court, this 16th day of May, A. D. 1947.

[Seal] C. W. CALBREATH,
Clerk.

By /s/ F. M. LAMPERT,
Deputy Clerk. [96]

[Title of District Court and Cause]

EXCERPT FROM PROCEEDINGS OF
FRIDAY, DECEMBER 7, 1945

(Book 393, pages 900 to 904, Reporter's notes)

Counsel Appearing:

FRANKLIN A. DILL, Esq.,
For petitioner Baxter Creek Irrigation
District.

W. COBURN COOK, Esq.,
For Bondholders' Protective Committee.

(The following proceedings occurred after the taking of oral testimony and during the introduction of documentary evidence:)

Mr. Dill: I would also like to call the Court's attention to one of the provisions in the plans in both of the districts where the trustee agrees to reimburse each district the following sums: the Tule District 306 and the Baxter 194 their expenses of this plan. The basis of that was for a certain flume that the district had the opportunity to sell but rather than selling it they left it intact so that it could be used if this plan went through by the trustee.

I would like to call attention to one provision in the Baxter Irrigation District—in their plan—in which there are certain parcels of land that are listed and the redemption values given, and at the top of this schedule there is a provision in the plan that if the United States District Court holds that these lands are not within the boundaries of the district they will not be redeemed.

The basis of this provision, of course, was that in the Pueblo v. Baxter Creek Irrigation District case, No. 4915—you no doubt remember the hearing that Mr. Cook and myself had, and you made certain orders in that case. At this time, your Honor, I would like to introduce in evidence those orders that were made.

Mr. Cook: To which I wish to object. This point, if your Honor please, resolves itself this way: When these contracts were signed, Exhibit B containing

the land schedules were not attached to the contract—they were subsequently attached—and I don't believe I was aware of the statement on there that the District Court would determine whether this group of land should be excluded or not.

It is true that in the Pueblo Trading Company case your Honor decided that they were not subject to assessment and of course the Pueblo Trading Company is bound by that, but I am appearing in this case today for the Bondholders' Protective Committee. They were not parties to that and I rather question whether the District Court can determine the question of whether so far as the district is concerned these lands are excluded lands.

I object to the introduction of the judgment in the Pueblo Trading case on behalf of the Bondholders' Protective Committee. It is not binding upon them.

I suggest, however, that it might be proper for the Court here to make some suggestion or order as to how this matter should be determined. I would suggest that the Superior Court in Lassen County is probably the proper court to determine that question, and that the Trustee in the decree might be directed to either quit-claim to these parties within a period of 90 days or else to bring an action in the Superior Court of that county to determine whether they are in the district or not. But so far as this proceeding is concerned, I object to the introduction of this judgment on the ground that it is not binding upon the Bondholders' Protective Committee.

Mr. Dill: Your Honor, in further support of my

offer of proof, I state the following: first, that both plans, Tule and Baxter, have a provision therein—they speak for themselves—but any land owner has the right to contest the question of whether their land was within the boundaries—not necessarily applying to these six—any one of them can come into court if they care to.

Mr. Cook: That is correct.

Mr. Dill: And that provision was agreed to by Mr. Cook.

Mr. Cook: That is right.

Mr. Dill: Now, in line with Mr. Cook's statement that as to the last plan that when he signed it the schedule was not attached, I believe he is correct. However, to get the full picture you have to go back, that there were several plans proposed through our negotiations. One plan was adopted July 9th, if I remember right, 1945, copies of which were sent—completed copies to Mr. Cook—which I have in my suitcase if the Court wishes to see them, to which all the schedules were attached. The only changes made further in the plan was that one parcel was changed in application and certain other provisions as to Mr. Cook's fees and certain other things.

I submit that the trustee was aware of the schedules of the plan. It was clearly understood. This is a factual consideration.

Further particularly I submit these orders are binding on everybody. If Mr. Cook would like to submit some authorities—I say in any case it is binding upon the Pueblo Trading Company and the

Pueblo Trading Company is before the Court today. They have filed their claims and have consented to them.

But rather than to labor the point with the Court I offer these papers, and if the Court would like to reserve its ruling it will be agreeable with me.

Mr. Cook: I would like to suggest this further and that is that the Pueblo Trading Company action was not brought on behalf of any other creditor; that even if I did have knowledge as trustee of these proceedings and the like, that there are certainly other creditors here who can come in and appeal. What I am trying to avoid is the necessity, if it should be deemed that the Court would follow the Pueblo Trading ruling and rule that these lands are out, of putting some creditors in the position of appealing, notwithstanding this whole plan they are talking of really does not involve the plan, because the redemption values are set up. If they are not in the district they just don't have to redeem. They just don't have to do anything. Their title is clear. On the other hand, if they are in the district then the title is not clear.

And it just seems to me that that question can be determined, if your Honor feels it has to be determined in this Court, at a subsequent time on the application of these landowners themselves—Mr. Dill is not appearing for them here; he is appearing for the district—if they wish to apply to this court at some time for a determination on that, and then if there was an appeal it would involve just that collateral matter and not the whole plan.

I don't like to have this plan held up. I want it to go through, and I am pleading with the Court to deny the introduction of the evidence and to make some order that will permit any landowner to come in here and present his case at a later date regardless of the plan of composition determined to be fair and so forth, or else as I have suggested that I be directed either to quit-claim to these landowners within three months or to bring a suit to determine that they are in or out in the Superior Court of Lassen County.

That is what I ask.

Mr. Dill: Your Honor, I submit that that same provision was made in the Pueblo Trading Company case directing landowners to later come in and the land owners did come in and had a favorable ruling from the Court.

It is well understood that those lands were not to be considered a part of the plan, as counsel knows, and that is why they are set forth in a separate part of the ~~decree.~~ *schedule.*

I would like for the record rather than laboring the point further to offer these——

The Court: I am going to suggest that you submit the matter on briefs.

Mr. Cook: Yes, and I am pleading with counsel further that he is laying the foundation for a further six months' delay in this case. He is here representing the districts and now he is taking the position of representing the landowners who have not even authorized him to appear. I hope we don't have to brief this matter. I want this plan to go

through without delay. The plan itself provides that any landowner can come in and ask to have any point determined.

And that is what—I don't see—Unless the Court orders the filing of briefs I would like to have the matter disposed of now, and I suggest to your Honor to deny the admission of this exhibit and make an order permitting any land owner to come in and apply to the Court for determination.

Mr. Dill: I don't want to delay this plan at all. From the time I was born these districts have been having trouble, just about, and if any one has the good faith and intent of having this plan go through properly and without any trouble I do; but I believe that these orders should be introduced. The district has made a determination themselves that the land was not in the district and that is why the district did not appear in the Pueblo Trading Company case. However, in an individual capacity I represented several land owners in that district before this court, as Mr. Cook well knows, and it was the intent all throughout that that was to settle the case.

I make the offer of the following documents anyway—

Mr. Cook: To which I object on the grounds stated.

Mr. Dill: Yes.

Mr. Cook: That is in the Baxter case only.

Mr. Dill: Well, that is the only one, yes.

The following documents in Pueblo Trading Company vs. Baxter Irrigation District:

Affidavit of service by mail of a notice—order of this present court dated August 27, 1945, and a notice by the Clerk of the entry of that order dated August 27th;

Stipulation dated—I mean filed October 3d;

An order filed October 3d, 1945;

Stipulation filed October 9, 1945;

An order as to the Farrell lands filed October 9, 1945;

Notice of entry of orders filed October 27, 1945.

The Court: You are offering these for identification?

Mr. Dill: I offer them as evidence.

The Court: They will be admitted.

(The documents referred to were marked Baxter Irrigation District's Exhibit No. 30.)

I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office.

Attest:

[Seal] C. W. CALBREATH,
Clerk, District Court of the U. S., Northern District
of California.

/s/ By F. M. LAMPERT,
Deputy Clerk.

[Endorsed]: Filed May 24, 1947.

Mr. Dill: I would like to introduce next in evidence in the Baxter Irrigation District case a general map outlining the boundaries of the district—as outlined on the Leon Blye Eagle Lake Project Map, a copy of which you are no doubt familiar with, having been introduced in the Pueblo Trading case, number 4195-L, by myself.

Mr. Cook: No objection.

The Court: Admitted.

(The map referred to was marked Baxter Exhibit No. 15.)

Mr. Dill: I would like to introduce in evidence summaries taken from Schedule B of the Tule Irrigation District disclosing the number of tracts and acreages and the redemption value as set forth now, and also a schedule or summary from schedule B from the plan of the Baxter Irrigation District setting forth in detail the tracts, and so forth.

(The documents referred to were marked Baxter Exhibit No. 29.)

Re: Baxter Creek Irrigation District—No. 10,750
Bk.—December 7, 1945.

(The following proceedings occurred after the introduction of documentary evidence—Book 393, page 908, Reporter's notes:)

Mr. Dill: Your Honor, if it is agreeable with the court, and I believe counsel concurs, if we could have a ten-minute recess to check a few matters and perhaps this case can be submitted.

The Court: Yes. Recess for a short time.

(Recess.)

Mr. Dill: Your Honor, there has been some discussion about the offer of proof that I made of certain records of the Pueblo Trading Company and I have been authorized by the Baxter Creek Irrigation District to withdraw those orders because perhaps of some possible question of appeal from those orders and rather than hinder the approval of this plan, if agreeable with the Court, I wish to withdraw them. However, on these conditions and representation to the Court: that by doing so we do not waive our rights or acknowledge that the land is ~~not~~ within the Baxter Creek Irrigation District.

Mr. Cook: So agreed.

Mr. Dill: And furthermore I have the right and I have I think the duty imposed by law in my profession of counsel, since I represent certain landowners of that district, that we do not waive any rights as to that, because I appear ~~for~~ the Pueblo Trading Company, although my term of employ-

ment in that case is ended and I am under no obligation one way or the other, but I feel it is my duty to make my position clear on that, but in order not to hinder the approval of this plan I will agree to that.

Mr. Cook: Baxter Exhibit 30 is withdrawn.

Mr. Gerald Wallace: Without prejudice?

Mr. Dill: Yes, without prejudice ~~in~~ any other proceeding, State or otherwise, on behalf of the District.

I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office.

Attest:

[Seal] C. W. CALBREATH,
Clerk, District Court of the U. S., Northern District
of California.

/s/ By F. M. LAMPERT,
Deputy Clerk.

[Endorsed]: Filed May 27, 1947.

[Endorsed]: No. 11632. United States Circuit Court of Appeals for the Ninth Circuit. W. Coburn Cook, as Trustee, Appellant, vs. Baxter Creek Irrigation and the Landowners, H. J. Clark, Lurley Clark, Leonora M. Bailey, Lyal Zeitler, George McRorey, Rachel McRorey, Mr. and Mrs. E. A. Blickenstaff and James N. Farrell and Amy L. Farrell, Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Northern Division.

Filed May 17, 1947.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11632

W. COBURN COOK, as Trustee for the Creditors
of Baxter Creek Irrigation District,

Appellant,

vs.

BAXTER CREEK IRRIGATION DISTRICT,
et al.,

Appellees.

STATEMENT OF POINTS ON APPEAL

Appellant states that the points upon which he intends to rely on the appeal in this cause and the er-

rors which he avers occurred in the hearing and determining of this decision and the order appealed from are the following:

1. The court erred in denying the application of appellant to commence certain actions or proceedings for the purpose of determining whether certain lands owned by H. J. Clark, Lurley Clark, Lenora M. Bailey, Lyal Zeitler, George McRorey, Rachel McRorey and Mr. and Mrs. G. A. Blickenstaff (successors in interest to Lyman Dermott Stiles) and James M. Farrell and Amy L. Farrell may be subject to assessments for the indebtedness which is the subject of the composition proceedings.

2. The court erred in holding and determining that the decision in the case of Pueblo Trading Co. v. Baxter Creek Irrigation District, 61 Fed. Supp. 586, was a determination of the issues herein or that the decision therein is binding on the irrigation district and any persons asserting rights through or as successor in interest to or by virtue of the irrigation district, or binding upon the trustee herein or the creditors he represents herein, and erred in finding that the court did or could in said case determine as to the trustee that the lands of the individual respondents H. J. Clark, et al., are not included within the Baxter Creek Irrigation District.

3. The court erred in giving any consideration to the matters determined in or the record in the said case of Pueblo Trading Co. v. Baxter Creek Irrigation District, Number 4195L in said court inasmuch as the decision and proceedings therein were no part of the record in the instant case.

Dated: May 27, 1947.

/s/ W. COBURN COOK,

Trustee for the Creditors of Baxter Creek Irrigation District.

[Affidavit of service by mail attached.]

[Endorsed]: Filed May 28, 1947.

[Title of Circuit Court of Appeals and Cause.]

**DESIGNATION OF CONTENTS OF RECORD
ON APPEAL AND FOR PRINTING**

The appellant designates as those parts of the record as necessary for the consideration of the points upon which the appellant intends to rely in this appeal and for printing herein the following:

1. Agreement between Baxter Creek Irrigation District and W. Coburn Cook which constitutes the Plan of Composition except Exhibits, if any, attached thereto.
2. Application for Instructions and Order dated October 24, 1946, and Notice.
3. Decision on application for instructions and order filed March 17, 1947.
4. Findings of Fact and Conclusions of Law.
5. Interlocutory Decree.
6. Minute Order of November 4, 1946, relative to Application for Instructions.
7. Minute Order of Court dated March 17, 1947, Granting Application for Instructions in Part.
8. Notice of Appeal to Circuit Court of Appeals for the Ninth Circuit.

9. Petition for Confirmation of Composition excepting all Exhibits attached thereto other than Exhibit A, Division A-1, Exhibit A, Division B, and page 5 of Exhibit C, including the title of said Exhibit.

10. Exhibit 29 of the Bankrupt introduced at the hearing on December 7, 1946, for confirmation of the Plan of Composition.

11. The following portions of the Statement of Bondholders' Protective Committee, namely: The Heading and paragraph numbered 1 and the sub-head therein which reads: "Statement of Expense of Committee," together with item number 5 thereunder and the closing paragraph and signature.

12. That part of Exhibit B attached to the Agreement which is called "Supplement to Baxter Creek Irrigation District."

13. Reporter's Transcript of portions of testimony.

14. Statement of Points on Appeal (in Circuit Court).

15. This designation.

16. The following may be printed although not considered necessary to consideration of the points involved, namely: Consents to plan of composition (omitting title of court and cause).

Dated: May 27, 1947.

/s/ W. COBURN COOK,
Trustee.

[Affidavit of service by mail attached.]

[Endorsed]: Filed May 28, 1947.

[Title of Circuit Court of Appeals and Cause.]

APPELLEES' DESIGNATION OF CONTENTS
OF RECORD ON APPEAL AND FOR
PRINTING

The appellees designate as those parts of the record in addition to those parts heretofore designated by the appellant as necessary for the consideration of the points upon which the appellant intends to rely in this appeal and for printing herein the following:

1. All of Exhibit 10 known as the Statement of Bondholders' Protective Committee except Exhibit "A" attached thereto which was not included in appellant's designation No. 11.
2. Consents to Plan of Composition omitting title of Court and cause referred to in appellant's designation No. 16.

Dated: June 6, 1947.

/s/ FRANKLIN A. DILL,
Attorney for Appellees.

(Affidavit of service by mail attached.)

[Endorsed]: Filed June 6, 1947.

